(17,905.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 420.

FRED LEE RICE, FRANK RUTLEDGE, AND THOMAS JONES, APPELLANTS,

vs.

JOHN C. AMES, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF ILLINOIS.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas had at a regular term of the district court of the United States of America for the northern division of the northern district of Illinois, begun and held in the United States court-rooms, in the city of Chicago, in said division and district, on the first Monday of July, it being the 2nd day thereof, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fourth year.

Present: The Hon. Christian C. Kohlsaat, judge presiding; John C. Ames, United States marshal for said district, and T. C. MacMillan, clerk of said district court.

In re Petition of FRED LEE RICE ET AL. for Writ of *Habeas Corpus*. 9304.

Be it remembered that heretofore, to wit, on the 11th day of July, A. D. 1900, there was filed in the clerk's office of the district court of the United States for the northern district of Illinois a petition in the above-entitled cause; which said petition is in the words and figures following, to wit:

2 In the United States District Court in and for the Northern District of Illinois.

UNITED STATES *ex Rel.* FRED LEE RICE, Frank Rutledge, and Thomas Jones *vs.* JOHN C. AMES, United States Marshal for the Northern District of Illinois.	Petition for Writ of *Habeas Corpus*.

To the Honorable Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois:

Your petitioners, Fred Lee Rice, Frank Rutledge, and Thomas Jones, respectfully show that they are now imprisoned and restrained of their liberty by John C. Ames, United States marshal for the northern district of Illinois, at the Cook County jail, in the city of Chicago, in said district.

That your petitioners are thus imprisoned and held in custody under color and authority of the Constitution and statutes of the United States relating to the returning of fugitives from justice to foreign countries with which the United States has concluded treaties of extradition.

That said John C. Ames, marshal, as aforesaid, claims to hold in custody and imprisonment your petitioners to await the action of the Secretary of State of the United States, under and by warrant of a certain warrant of commitment issued by Mark A. Foote, a United States commissioner and commissioner appointed by this honorable court, in pursuance of title 66 of the Revised Statutes of the United States, to act in extradition matters, a true copy of which warrant of commitment is hereto attached.

2½ Your petitioners further show that their said imprisonment is illegal and in violation of the Constitution and laws of the United States for the following reasons:

(1.) Your petitioners submit to this honorable court for decision the question as to whether or not the complaint of William Greer, made June 4th, 1900, is sufficient complaint under oath, as required by section 10 of the treaty with Great Britain and section 5270 of title 66, Revised Statutes of the United States, to give said Mark A. Foote jurisdiction in said matter.

Your petitioners further (say) that they believe that the portion of it relating to one of the charges on which they are held is on information and belief, and they submit to this court the question whether or not all of the complaint aforesaid is upon information and belief, and for that reason void.

(2.) Your petitioners believe that the said Mark A. Foote, commissioner, as aforesaid, lost all possible jurisdiction in the premises because, on motion of your petitioners to continue said cause for reasons hereinafter shown, but not for the purpose of taking depositions, as your petitioners were not entitled under the extradition laws of the United States to take depositions, the said Mark A. Foote thereupon, on June 14th, 1900, continued said cause or set the said matter for hearing for June 25th, 1900, for a period of more than ten days; that your petitioners believe that the said Mark A. Foote had no power or jurisdiction to continue said cause except by consent of the parties or for good cause shown, and then only for ten days, under the circumstances; and your petitioners believe that the actions of the said Mark A. Foote in continuing said proceedings for more than ten days at any one time was contrary to and in

3 violation of section six of the treaty with Great Britain proclaimed March 25th, 1890, and contrary to and in violation of the laws of the United States and of the laws of the State of Illinois regulating the mode of procedure of such examining magistrates in such cases made and provided, and your petitioners therefore believe that all orders thereafter entered in said proceedings by said Mark Foote are void and of no effect.

Your petitioners further show that they are citizens of the United States; that they were arrested and taken into custody June 1st, 1900, in the city of Chicago and State of Illinois, by certain police officers of the city of Chicago, and were taken by said police officers and locked up in the Desplaines Street police station, in the said city of Chicago, on the day of their arrest; that your petitioners were not engaged in the violation of any criminal code or in the commission of any crime whatsoever at the time they were arrested, and that no charges whatsoever had been lodged against your petitioners before any court or magistrate, and no warrant of any kind was then produced authorizing the arrest and detention of your petitioners; that they were told by the police that your petitioners were held as being fugitives from justice and were wanted for offenses committed in Canada; that after being confined, as aforesaid, in the Desplaines Street station, in the city of Chicago, for about the space of twenty-six hours, your petitioners were, on June 2d, 1900, taken

by certain police officers of the city of Chicago before said
4 Mark A. Foote, United States commissioner, as aforesaid, and on the complaint of a police officer named R. Wooldridge the said Mark A. Foote issued his warrant to John C. Ames, United States marshal for the northern district of Illinois, directing said marshal to keep your petitioners in close custody and confinement and bring them before said Mark A. Foote on June the 4th, 1900.

Your petitioners further say that they believe that the complaint so made by said police officer, R Wooldridge, was wholly insufficient to give the said Mark A. Foote jurisdiction to issue his warrant for the arrest and detention of your petitioners, because said complaint was wholly on information and belief and did not show that the said police officer, R. Wooldridge, was authorized to act for the Canadian government.

Your petitioners further show that on the 4th day of June, 1900, they were brought by the said John C. Ames before the said Mark A. Foote, and that the said Mark A. Foote thereupon announced that the proceedings instituted on the complaint of R. Wooldridge were dismissed, and that a complaint had, on June the 4th, been lodged against your petitioners, in which one Arthur Cuddy, a police officer of Canada, was the complainant; that thereupon said Arthur Cuddy requested said Mark A. Foote to continue the said hearing on his complaint in order that he might procure evidence of criminality against your petitioners; whereupon said Mark A. Foote continued said hearing until the 14th day of June, 1900, and thereupon issued his warrant to the said John C. Ames, marshal, as aforesaid, in and by which said warrant said marshal was directed to keep your petitioners in close confinement and custody and bring your petitioners before said Mark A. Foote on the 14th day of June, 1900.

5 Your petitioners further show that they believe the said complaint of Arthur Cuddy was on information and belief and insufficient and void and gave said Mark A. Foote no jurisdiction whatever to issue the last aforesaid warrant; and your petitioners say that they, by their counsel, at the time the charge was lodged against them on the complaint of said Arthur Cuddy, pointed out to said Mark A. Foote that said complaint was void, and asked that your petitioners be forthwith discharged and set at liberty from said imprisonment, but that said Mark A. Foote overruled your petitioners' said motion for discharge; to which ruling your petitioners, by their counsel, then and there excepted.

Your petitioners further say that they were thereupon confined in close custody in the jail of Cook county under and by virtue of the last aforesaid warrant, and by the said John C. Ames, marshal, as aforesaid, brought before the said Mark A. Foote on the said 14th day of June, 1900; and thereupon, on motion of Lynden Evans, attorney for the Canadian government, the proceeding, based upon the complaint of Arthur Cuddy, made on June the 4th and continued to June the 14th, 1900, was dismissed and a new complaint filed by William Greer, a detective from Toronto, Canada.

Your petitioners further show that *that* when they appeared before said Mark A. Foote they, by their counsel, asked that the extradition proceedings be continued, on the ground that they wanted to have time to examine and prepare for the defense of the complaint of the said William Greer then and there lodged against them, which said complaint contained some matters not originally found in any previous complaint, and upon the further ground that they were entitled to make a defense and procure from the Canadian authorities the only

6 money that your petitioners had (which was taken from them when arrested and turned over to the Canadian authorities) for the purposes aforesaid; whereupon the said Mark A. Foote continued or set said extradition matter to June 25th, A. D. 1900, at the hour of 10 o'clock a. m., and issued a new warrant for the arrest and imprisonment of your petitioners, and directed to the said John C. Ames, marshal, as aforesaid, in and by virtue of which your petitioners were kept in close custody and confinement from the 14th day of June until June 25th, 1900, on which day they were again by said marshal brought before said Mark A. Foote.

Your petitioners further say that they are informed and believe that the said Mark A. Foote had no jurisdiction on June the 14th, 1900, for various reasons, among them being that no proper or sufficient complaint had been lodged in said proceedings in and by which said Mark A. Foote obtained jurisdiction to issue his warrants; that if it should be held that the said Mark A. Foote did have jurisdiction on the 14th day of June, 1900, he lost all jurisdiction in continuing the case from June 14th to June 25th, which was a period more than ten days, and your petitioners believe to be contrary to the express provisions of the treaty between the United States and Great Britain of 1842 and 1889, the last treaty being in force in March, A. D. 1900, and contrary to the statutes of the United States and the State of Illinois.

Your petitioners further show that they are informed and believe that the action of said Mark A. Foote in continuing said cause for more than ten days was without any authority in law and amounted to a discontinuance, and that any and every order thereafter entered by him in the said extradition proceedings was absolutely void.

6½ Your petitioners further show that section 6 of the treaty between the United States and Great Britain, proclaimed March 25th, A. D. 1890, is as follows:

"The extradition of fugitives under the provisions of this act *o*nd of the tenth article shall be carried out in *in* the United States and in Her Majesty's dominions, respectively in conformity with the laws regulating extradition for the time being in the surrendering State."

Your petitioners further show that section 1014 of the Revised Statutes of the United States is as follows:

"For any crime or offense against the United States the offender may, by any justice or judge of the United States court, by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of the com-

mon pleas, mayor of a city, justice of the peace, or other magistrate of any State where he may be found, and agreeable to the usual mode of process against offenders in such State and at the expense of the United States be arrested and imprisoned, or bailed as the case may be, for trial before such court of the United States as by law has cognizance of the offense."

Your petitioners further show that section 727 of the Revised Statutes of the United States is as follows:

"The judges of the Supreme Court and of the circuit and district courts, the commissioners of the circuit courts, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States shall have the like authority to hold to security of the peace and for good behavior in cases arising under the Constitution and laws of the United States may be lawfully exercised by any judge or justice of the peace of the respective States in cases cognizable before them."

Your petitioners further show that the legislature of the State of Illinois enacted a law regarding fugitives from jus ice, and is contained in chapter 60 of the Revised Statutes of the State of Illinois, in force July 1st, 1874, and that section 3 of said chapter 60 is as follows:

"When a person is found in this State, charged with an offense committed in another State or Territory and liable by the Constitution and laws of the United States, to be delivered over upon the demand of the executive of such other State or Territory, any judge, justice of the peace or police magistrate may, upon complaint under oath, setting forth the offense, and such other matters as are necessary to bring the case within the provisions of the law, issue a warrant to bring the person charged before the same or some other judge, justice of the peace or police magistrate within this State, to answer to such complaint, as in other cases."

7 Your petitioners further show that they believe that said Mark A. Foote was sitting as an examining magistrate in hearing the above extradition proceedings, and that magistrates of the State of Illinois are governed by the act relating to justices and constables—chapter 79, Revised Statutes of the State of Illinois—and that section 67, article 7, of said chapter is as follows:

"The justice, before the commencement of the trial, may continue a cause not exceeding ten days at any one time, upon consent of the parties, or for any good cause shown, and either party shall be entitled to such continuance, if it shall appear upon his oath, or that of a credible witness, that he cannot safely go to trial on account of the absence of material testimony. No continuance shall be granted on the application of either party, unless it shall appear that he has used due diligence to be ready for trial; nor for the want of evidence if the other party will admit the facts proposed to be proved, or if the evidence desired is the testimony of a witness, that the witness, if present, would testify as alleged by the party applying for the continuance; and if the party making such admission may controvert the facts proposed to be proved by such absent witness."

Your petitioners further show that on the 25th day of June, 1900, your petitioners, by their attorney, at the opening of the proceeding and before any evidence whatever was taken, moved to dismiss the said proceeding before the said M. A. Foote, on the ground that he had no jurisdiction in the premises and therefore could not proceed any further under said complaint, and for the further reason that said complaint was wholly insufficient and void; that said Mark A. Foote overruled said motion to discharge.

That on the 25th day of June, A. D. 1900, the said cause was continued to the 26th day of June, at 10.30 a. m., before said Mark A. Foote, and on June 26th continued to June 27th, 1900.

That on June 27th, 1900, Mr. Lynden Evans, counsel for the demanding government, in the forenoon of said day rested his case and announced that he had no further evidence to offer in
8 the extradition proceedings; that thereupon, in the afternoon of said day, counsel for your petitioners asked that the prisoners be discharged on the ground that said Mark A. Foote had no jurisdiction, and that the evidence was wholly insufficient to sustain the complaint, and that said Mark A. Foote overruled all the motions made by your petitioners and continued said cause until June 28th, at 10 a. m.; that on the morning of June 28th, A. D. 1900, your petitioners, Frank Rutledge and Thomas Jones, announced to said Mark A. Foote that they denied the authority of the said Mark A. Foote to imprison them in the above matter for the reason that said Mark A. Foote had no jurisdiction, and refused to introduce any evidence whatsoever in their behalf in said proceedings; that said Mark A. Foote thereupon then and there refused to discharge your petitioners and continued said proceedings, to take same under advisement—the record of said commissioner will show how—until July 6th, 1900; that on the 28th day of June, 1900, your petitioners were again taken into custody by the said John C. Ames, United States marshal, as aforesaid, under and by virtue of the last aforesaid warrant, and taken into custody until the 6th day of July, 1900; that on the 6th day of July said United States commissioner continued said proceeding until July 10th, 1900, and your petitioners — again taken into custody by said United States marshal.

Your petitioners further show that on July 10th, 1900, your petitioners were again brought before said Mark A. Foote by said marshal; that said Rice introduced testimony in his behalf, and that thereupon he rested his case, and that counsel for the prisoners again moved the court to discharge your petitioners, but that said commissioner held your petitioners for extradition and issued his warrant, on which your petitioners are now held.

9 Wherefore your petitioners pray that a writ of *habeas corpus* may issue out of the district court of the United States for the northern district of Illinois to the said John C. Ames, marshal of the United States district court for the northern district of Illinois, requiring him to produce the bodies of your petitioners before said court, at some convenient time to be therein designated, there to abide what shall be awarded by the court in the premises,

and that your petitioners may be discharged from said imprisonment.

Your petitioners also pray that a writ of certiorari may issue out of said court to said Mark A. Foote, United States commissioner and extradition commissioner, as aforesaid, requiring him to certify with all convenient speed all of the complaints, records, proceedings, and evidence by virtue of which he assumed to act in the premises since June 2nd, 1900, and finally to issue said warrant of commitment.

(Signed) FRED LEE RICE.
FRANK RUTLEDGE.
THOMAS JONES.

NORTHERN DISTRICT OF ILLINOIS, } ss:
County of Cook, }

On this 10th day of July, in the year 1900, before me, Samuel H. Trude, a notary public, personally appeared Fred Lee Rice, Frank Rutledge, and Thomas Jones, the above-named petitioners, and, being by me duly sworn, made oath that the foregoing petition by them subscribed is true in substance and in fact, except as to such matters as are therein stated to be upon information and belief, and as to those matters they believe them to be true.

[SEAL.] SAMUEL H. TRUDE,
Notary Public.

10 UNITED STATES OF AMERICA, }
Northern District of Illinois. }

The President of the United States of America to the marshal of the United States for the northern district of Illinois, and the keeper of the common jail of the county of Cook, in the State of Illinois, Greeting:

Whereas complaint has been made under the oath of William Creer, an Ontario government detective for the province of Ontario, in the Dominion of Canada, duly appointed, qualified, and acting as such, and instructed and authorized by the attorney general of the said province to prosecute extradition proceedings against Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, before Mark A. Foote, United States commissioner in and for said northern district of Illinois, and duly authorized by the district court of the United States in and for the northern district of Illinois to issue warrants for the arrest of fugitives from the justice of foreign governments; that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, as complainant is informed and believes, on the 23rd day of May, nineteen hundred, at the town of Aurora, in the county of York and province of Ontario, in the Dominion of Canada, within the jurisdiction and government of Great Britain, commit the crimes of larceny—that is to say, the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge,

alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, at the time and place aforesaid, did steal from the Post-office building in the said town of Aurora a quantity of Canadian postage stamps, as follows: 100 half-cent stamps, 3,500 one-cent stamps, 3,970 two-cent stamps (rose color), 1,300 two-cent stamps (purple color), 83 one-cent, surcharge two-cents; 650 three-cent stamps (maple-leaf design), 170 five-cent stamps,
11 and seven ten-cent stamps, and also certificate for a quantity of mining stock, to wit, certificate for 500 shares in the Monte Christo Mining Company, 100 shares in the Lily May Mining Company, 533 shares in the Roseland Red Mountain Mining Company, 100 shares in the West Egg Gold Mining Company, 250 shares in the Caledonian Consolidated 500 shares in the Vulcan Gold Mining Company, and a receipt for 100 shares in the Silver Ball Mining Company, together with a certain sum of money, to wit, to the amount of $55.00, all the said postage stamps and certificates for mining stock being the property of one H. R. Proctor, and being in all to the value of over two hundred dollars ($200.00); and that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelley, did, upon the 23rd day of May, nineteen hundred, in the town of Aurora, county of York, and Province of Ontario, in the said Dominion of Canada and within the jurisdiction and government of Great Britain, steal one stallion horse, one road cart, and one set of harness, of the value of over two hundred dollars ($200.00), the property of Philip C. Button, of the town of Stouffville, in the county of York, aforesaid; and

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, on the 23rd day of May, nineteen hundred, at the town of Aurora aforesaid, by night, unlawfully break and enter a certain counting-house or private bank of one John L. Ross, situated in the said town of Aurora, with intent, in so doing, to commit an indictable offense, to wit, to steal the moneys of the said John L. Ross, then being in the said counting-house or bank; and that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias
12 Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, then and there being in the same counting-house or bank of the said John L. Ross, unlawfully did steal a certain sum of money, to wit, in the amount of five hundred eighty-one dollars and eighty-five cents ($581.85), of the moneys *of the moneys* of the said John L. Ross, the same consisting of nine $5 bank notes (Canadian), one $5 bank note (American), eight $10 bank notes (Canadian), and one $2 Dominion of Canada note, twenty-two $1 Dominion of Canada notes, one silver dollar of the United States of America, and the sum of $21.85 in silver and copper; and

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, on the 22nd day of

May, nineteen hundred, in the city of Toronto, in the county of York and Dominion of Canada aforesaid, did commit the crime of shop-breaking and did unlawfully, maliciously, and forcibly break and enter into a certain building in Queen street west, in the said city of Toronto, known as the counting-house of the Standard Bank of Canada, and did commit an indictable offense, known to the law as shop-breaking, contrary to the form of the statutes of the said Dominion of Canada, to wit, section 413 of the Criminal Code of 1892; and

The said William Creer upon his oath further saith that he is informed and believes that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Fank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are fugitive- from the justice of Great Britain, and did, on or about the month of May, nineteen hundred, flee into the jurisdiction of the United States for the purpose of seeking an asylum and are now within the United States, and that the crimes aforesaid with which the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and
13 Frank Rutledge, alias Frank Dwyer, alias *alias* Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are charged are crimes embraced in the treaty of extradition between the United States and Great Britain; and

Whereas the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, have been apprehended and brought before me, the said Mark A. Foote, commissioner, as aforesaid, for examination on the foregoing charges; and

Whereas on such examination it appears to me that there is probable cause to believe the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, guilty of said offenses:

You, the said marshal, are hereby commanded that you convey the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, to the jail of the said county of Cook, and you, the said keeper of the said jail, are hereby commanded that you receive the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, into said jail and them there safely and securely keep until they be discharged therefrom by due course of law.

In witness whereof I have hereunto set my hand and seal, at Chicago, in said district, this tenth day of July, 1900, and of the Independence of the United States the 124th year.

_____,

U. S. Commissioner, North'n Dist. Ill.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

I have executed the foregoing mittimus, as therein commanded, this — day of July, A. D. nineteen hundred.

JOHN C. AMES,
U. S. Marshal,
By —— —— *Deputy.*

14

STATE OF ILLINOIS, }
County of Cook, } *ss:*

Received from John C. Ames, U. S. marshal, northern district of Illinois, the bodies of the above-named Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, this — day of July, A. D. nineteen hundred.

—— ——,
Jailer of Cook County,
By —— ——.

Endorsed: 9304. District court United States, no. dist. Ill. *In re* petition of Fred Lee Rice *et al.* for *habeas corpus.* Petition. Filed by leave of court July 11, 1900, at 2.20 o'clock p. m. T. C. MacMillan, clerk. $10.00 deposit. B. S. H. Trude.

And afterwards, to wit, on the 11th day of July, A. D. 1900, the following order was had and entered of record in said cause before the Hon. Christian C. Kohlsaat, judge, to wit:

In re Petition of FRED LEE RICE ET AL. for Writ of *Habeas Corpus.*
9304.

On motion of S. H. Trude, attorney for relators on the petition filed herein, and on notice to Lyndon Evans, attorney for the British government, it is ordered that a writ of *habeas corpus* issue to John C. Ames, marshal for the northern district of Illinois, according to the prayer in said petition, and that said writ of *habeas corpus* be returned before me, at my court-room, on the fourteenth day of July, A. D. 1900, at the hour of ten a. m. of said day.

And afterwards, to wit, on the 14th day of July, A. D. 1900, there was filed in the clerk's office of said court in said cause a writ of *habeas corpus*, said writ being in the words and figures following, to wit:

15 District Court of the United States of America, Northern District of Illinois, *ss:*

The United States of America to John C. Ames, United States marshal, northern district of Illinois, Greeting:

We command you that you do, on Saturday, the 14th day of July, A. D. 1900, at the hour of ten o'clock a. m., without excuse or delay, bring or cause to be brought before the district court of the United

States of America for the northern district of Illinois, now sitting in the court-room of said district court, in the city of Chicago, in said district, the bodies of Fred Lee Rice, Frank Rutledge, and Thomas Jones, by whatever name of additions they are known or called, and who are unlawfully detained in your custody, as it is said, together with the day and cause of *his* caption and detention, then and there to perform and abide such order and direction as our said district court shall make in that behalf. Thereof make due return, under the penalty of what the law directs.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Christian C. Kohlsaat, judge of the district court of the United States of America, at Chicago aforesaid, this 11th day of July, in the year of our Lord one thousand nine hundred, and of our Independence the 124th year.

[SEAL.] T. C. MACMILLAN, *Clerk.*

Endorsed: 3323. "By *habeas corpus* act." District court United States, northern district of Illinois. In the matter of the petition of Fred Lee Rice *et al.* for a writ of *habeas corpus.* Writ of *habeas corpus.* Returnable Sat., July 14, 1900, at 10 a. m. T. C. MacMillan, clerk. S. H. Trude, att'y for petitioner.

16 And afterwards, to wit, on the 14th day of July, A. D. 1900, said writ was returned and filed in said court, with the marshal's return thereon endorsed in the words and figures following, to wit:

In the District Court of the United States for the Northern District of Illinois, Northern Division.

In the Matter of the Petition of FRED LEE RICE, FRANK RUTLEDGE, and THOMAS JONES. *Habeas Corpus.*

To the Honorable Christian C. Kohlsaat, judge of said court:

I, John C. Ames, to whom the attached writ is directed, hereby certify and make return to the writ of *habeas corpus* issued in this case that I am the marshal of the United States for the northern district of Illinois, and that I arrested said petitioners upon June 14th, 1900, upon a warrant duly issued by Mark A. Foote, a United States commissioner duly authorized by said district court to hear applications for extradition and to issue warrants therefor, and that I duly produced said petitioners at each and every hearing on the application aforesaid before Mark A. Foote, commissioner aforesaid, at each and every hearing held before said commissioner in the matter of said application, and after each and every hearing held said petitioners under a commitment issued by the said United States commissioner, and that I now hold the above-named petitioners in my custody as such marshal by virtue of a certain commitment issued by Mark A. Foote, commissioner as aforesaid, on the 10th day of July, A. D. 1900, copies of which warrant and commitment are hereto attached, directing me, as said marshal, to forthwith

commit the said petitioners to the county jail of Cook county, in the said State of Illinois, until they be discharged therefrom by due course of law. Nevertheless, I have the bodies of the said petitioners now before this honorable court.

Dated July 14, 1900.

JOHN C. AMES,
United States Marshal,
By PETER A. ROWE,
Chief Deputy.

17 *Copy of Commitment.*

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

The President of the United States of America to the marshal of the United States for the northern district of Illinois and the keeper of the common jail of the county of Cook, in the State of Illinois, Greeting:

Whereas complaint has been made under the oath of William Greer, an Ontario government detective for the province of Ontario, in the Dominion of Canada, duly appointed, qualified, and acting as such, and instructed and authorized by the attorney general of the said province to prosecute extradition proceedings against Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, before Mark A. Foote, United States commissioner in and for said northern district of Illinois, and duly authorized by the district court of the United States in and for said northern district of Illinois to issue warrants for the arrest of fugitives from the justice of foreign governments, that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, as complainant is informed and believes, on the twenty-third day of May, nineteen hundred, at the town of Aurora, in the county of York and province of Ontario, in the Dominion of Canada, within the jurisdiction and government of Great Britain, commit the crimes of larceny—that is to say, the said Fred Lee Rice, alias Fred Harris, alias "Fritz," Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, at the time and place aforesaid, did steal from the post-office building in the said town of Aurora a quantity of Canadian postage stamps as follows: 100 half-cent stamps, 3,500 one-cent stamps, 3,970 two-cent stamps (rose color), 1,300 two-cent stamps (purple color), 83 one-cent stamps, surcharge two cents; 650 three-

18 cent stamps (maple-leaf design), 170 five-cent stamps, and 7 ten-cent stamps, and also certificates for a quantity of mining stock, to wit, certificate for 500 shares of stock of the Golden Star Mining Company, 5,000 shares in the Monte Christo Mining Company, 100 shares in the Lily May Mining Company, 533 shares in the Rossland Red Mountain Mining Company, 100 shares in the

Nest Egg Gold Mining Company, 250 shares in the Caledonian Consolidated, 500 shares in the Vulcan Gold Mining Company, and a receipt for 1,000 shares in the Silver Bell Mining Company, together with a certain sum of money, to wit, to the amount of $55.00, all the said postage stamps and certificates for mining stock and money being the property of one H. E. Proctor and being in all to the value of over two hundred dollars ($200.00); and

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did upon the twenty-third day of May, nineteen hundred, in the town of Aurora, county of York, and province of Ontario, in the said Dominion of Canada, and within the jurisdiction and government of Great Britain, steal one stallion horse, one road cart, and one set of harness, of the value of over two hundred dollars ($200.00), the property of Philip G. Button, of the town of Stouffville, in the county of York aforesaid; and

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did on the twenty-third day of May, nineteen hundred, at the town of Aurora aforesaid, by night, unlawfully break and enter a certain counting-house, to wit, the counting-house or private bank of one John L. Ross, situate in the said town of Aurora, with intent in so doing to commit an indictable offense, to wit, to steal the moneys of the said John
19 L. Ross, then being in the said counting-house or bank, and that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, then and there being in the said counting-house or bank of the said John L. Ross, unlawfully did steal a certain sum of money, to wit, in the amount of five hundred eighty-one dollars and eighty-five cents ($581.85), of the moneys of the said John L. Ross, the same consisting of nine $5 bank notes (Canadian), one $5 bank note (American), eight $10 bank notes (Canadian), and one $2 Dominion of Canada note, twenty-two $1 Dominion of Canada notes, one silver dollar of the United States of America, and the sum of $21.85 in silver and copper; and

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, on the twenty-second day of May, nineteen hundred, in the city of Toronto, in the county of York and Dominion of Canada aforesaid, did commit the crime of shop-breaking, and did unlawfully, maliciously, and forcibly break and enter into a certain building in Queen street west, in the said city of Toronto, known as the counting-house of the Standard Bank of Canada, and did commit an indictable offense known to the law as shop-breaking, contrary to the form of the statutes of the said Dominion of Canada, to wit, section 413 of the Criminal Code of 1892; and

The said William Greer upon his oath further saith that he is informed and believes that the said Fred Lee Rice, alias Fred Harris,

alias "Fritz;" Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are fugitives from the justice of Great Britain, and did on or about the month of May, nineteen hundred, flee into the jurisdiction of the United States for the purpose of seeking an asylum, and are now within the United States, and that the crimes aforesaid, with
20 which the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are charged, are crimes embraced in the treaty of extradition between the United States and Great Britain; and

Whereas the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, have been apprehended and brought before me, the said Mark A. Foote, commissioner, as aforesaid, for examination on the foregoing charges; and

Whereas on such examination it appears to me that there is probable cause to believe the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, guilty of said offenses:

You, the said marshal, are hereby commanded that you convey the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, to the jail of the said county of Cook; and you, the said keeper of the said jail, are hereby commanded that you receive the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, into said jail, and them there safely and securely keep until they be discharged therefrom by due course of law.

In witness whereof I have hereunto set my hand and seal, at Chicago, in said district, this tenth day of July, 1900, and of the Independence of the United States the 124th year.

MARK A. FOOTE,
U. S. Commissioner, North'n Dist. Ill.

NORTHERN DISTRICT OF ILLINOIS, *sct:*

I have executed the foregoing mittimus, as therein com-
21 manded, this 10th day of July, A. D. nineteen hundred.

JOHN C. AMES,
U. S. Marshal,
By PETER A. ROWE,
Chief Deputy.

STATE OF ILLINOIS, } ss:
County of Cook, }

Received from John C. Ames, U. S. marshal, northern district of Illinois, the bodies of the above-named Fred Lee Rice, alias Fred

Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, this 10th day of July, A. D. nineteen hundred.

JOHN L. WHITMAN,
Jailer of Cook County,
By WILL T. DAVIES,
Jail Clerk.

Endorsed: Filed July 14, 1900. T. C. MacMillan, clerk.

And afterwards, to wit, on the 14th day of July, A. D. 1900, there was filed in the clerk's office of said court an amendment to petition in said cause; which said amendment is in the words and figures following, to wit:

In the United States District Court in and for the Northern District of Illinois.

UNITED STATES *ex Rel.* FRED LEE Rice, Frank Rutledge, and Thomas Jones *vs.* JOHN C. AMES, United States Marshal for the Northern District of Illinois.	Amendment. Amendment to Petition for Writ of *Habeas Corpus.*

To the Honorable Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois:

Now, on this day, come your petitioners, by S. H. Trude, their attorney, and by leave of court first had and obtained present herewith their amended petition, which contains two additional reasons not heretofore mentioned in the original petition, said reasons being as follows:

Your petitioners further say that they believe that section 5270 of title 66 of the Revised Statutes of the United States is unconstitutional, in that it is in contravention of section 1, article 3, of the Constitution of the United States. Your petitioners further say that they do not believe said section 1 authorized Congress to establish a court in the manner in which section 5270, title 66, aforesaid, authorizes a district court to appoint an inferior court for the
22 purpose of extradition. Your petitioners further believe that it was not in the power of Congress to delegate to a district judge the power to establish such a court. Your petitioners further believe that the actions of the commissioner in extradition matters, in the hearing and proceeding, are judicial in their nature and not merely misisterial, and that if said commissioner, Mark A. Foote, in the extradition matter herein was not sitting as a court in hearing and rendering judgment in the premises, then his actions were void, as he in such case would be exercising judicial power not in accordance with section 1, article 3, of the Constitution of the United States.

Your petitioners further submit to this honorable court th
tion as to whether or not they were at any time since the beg
of said extradition proceedings and are now entitled to bai
on June the 4th, A. D. 1900, your petitioners applied to said M
Foote, commissioner, to fix a reasonable bail in the premis
that said Mark A. Foote took said motion under adviseme
never has at any time fixed any bail for your petitioners, an
petitioners pray that if they are not discharged forthwith th
be released upon furnishing reasonable and sufficient bail.

FRED LEE RICE
FRANK RUTLED
TAM JONES.

Subscribed and sworn to before me this 14th day of July
1900.

CHAS. A. BUELL,
Deputy Clerk U. S. Dist. Court, Northern Dist. of Ill

Endorsed: 9304. In district court of United States, no. di
In re petition of Fred Lee Rice *et al.* Amendment of p
Filed July 14, 1900, at 10.45 o'clock a. m. T. C. MacMillan
S. H. Trude, att'y for relators.

And afterwards, to wit, on the 14th day of July, A. D. 19
following order was had and entered of record in said cause
the Honorable Christian C. Kohlsaat, judge, to wit:

23 *In re* Petition of FRED LEE RICE, FRANK RUTLED
THOMAS JONES for Writ of *Habeas Corpus.* 9204.

This cause coming on to be heard on the petition and an
petition filed in this cause and the return of the marshal
writ of *habeas corpus* heretofore issued herein, come the petit
by S. H. Trude, Esq., their attorney, and in custody of the m
and comes also John C. Ames, the marshal for this district,
spondent herein, by Lynden Evans, Esq., his attorney; ther
the court, having heard the arguments of counsel for the peti
and for said marshal and being fully advised in the premise
that said petitioners are lawfully restrained from their liberty,
thereupon ordered and adjudged by the court that the petitio
amended petition in this cause be, and are hereby, dismisse
that said petitioners, Fred Lee Rice, Frank Rutledge, and T
Jones, be, and they hereby are, remanded to the custody of th
marshal, and that said petitioners pay the costs of this proce

And afterwards, to wit, on the 16th day of July, A. D. 1900
was filed in the clerk's office of said court an assignment of
in said cause; which said assignment of errors is in the word
figures following, to wit:

In the Supreme Court of the United States.

In the Matter of FRED LEE RICE, FRANK RUTLEDGE, and THOMAS Jones on Petition and Hearing of Writ of *Habeas Corpus*
vs.
JOHN C. AMES, United States Marshal in and for the Northern District of Illinois.

Appeal from judgment of Christian C. Kohlsaat, judge of the district court of the United States in and for the northern district of Illinois.

And now, on, to wit, this 16th day of July, A. D. 1900, before Chrsitian C. Kohlsaat, judge of the district court of the United States in and for the northern district of Illinois, come Fred
24 Lee Rice, Frank Rutledge, and Thomas Jones, the said appellants, by S. H. Trude, their attorney, and, in accordance with rule 35 of the Supreme Court of the United States, submit the following assignment of errors, and say that in the record and proceedings aforesaid:

(1.) That there is manifest error in this, to wit, Mark A. Foote, the United States commissioner and extradition commissioner, who heard the evidence and held your petitioners in said matter to await the action of the secretary of state, had no jurisdiction on June the 14th, A. D. 1900, to issue the warrant for their said commitment, dated that day, because the complaint of William Greer was on information and belief and not a sufficient complaint as required by section 10 of the treaty with Great Britain and section 5270, title 66, Revised Statutes of the United States.

(2.) There is also manifest error in this, to wit, that said Mark A. Foote lost all possible jurisdiction in the premises by continuing said proceedings on June 14th, 1900, to June 25th, 1900, for a period more than ten days; that said continuance was not in conformity to any law and contrary to and in violation of section 6 of the treaty with Great Britain, enacted in 1889, proclaimed March 25, 1890, contrary to and in violation of the laws of the United States and of the laws of the State of Illinois regulating the mode of procedure of such examining magistrates in such cases made and provided.

(5.) There is also manifest error in this, to wit, that said Mark A. Foote had no jurisdiction in the premises, because section 5270 of title 66 of the Revised Statutes of the United States is unconstitutional (1) because it does not provide for any mode of procedure relating to continuances, change of venue, bail, etc., before commissioners appointed in extradition matters by the district courts
25 of the United States; (2) section 5270, title 66, is unconstitutional because Congress had no power to confer upon a district judge of the United States power to create such inferior courts; (3) because said magistrate is exercising judicial powers in the premises, and Congress has not created such court and established its jurisdiction, powers, etc.

(6.) There is also manifest error in this, to wit, that your petitioners were denied bail by the said Mark A. Foote.

(7.) There is also manifest error in this, to wit, that the finding and judgment of Christian C. Kohlsaat, judge of the district court of the United States in and for the northern district of Illinois, denied the application of your petitioners for discharge in said *habeas corpus* proceedings, which finding and judgment were excepted to by your petitioners at the time it was entered, whereas by the law of the land the said judgment ought to have discharged your petitioners and set them at liberty, and the said Fred Lee Rice, Frank Rutledge, and Thomas Jones pray the judgment aforesaid may be reversed and annulled, and that your petitioners may be discharged and set at liberty in this *habeas corpus* proceeding.

SAMUEL H. TRUDE,
Attorney for Appellants.

Endorsed: 9304. *In re* Fred Lee Rice *et al.* Assignment of errors. Filed July 16, A. D. 1900. T. C. MacMillan, clerk.

And afterwards, to wit, on the 16th day of July, A. D. 1900, there was filed in the clerk's office of the district court of the United States a petition for appeal in said cause; which said petition for appeal is in the words and figures following, to wit:

District Court of the United States for the Northern District of Illinois.

In re Matter of Petition of FRED LEE RICE, FRANK RUTLEDGE, and Thomas Jones for Writ of *Habeas Corpus*
vs.
26 JOHN C. AMES, United States Marshal in and for the Northern District of Illinois.

Petition for Appeal and Writ of Supersedeas.

The above-named Fred Lee Rice, Frank Rutledge, and Thomas Jones consider*ing* themselves ag-rieved by the finding and order of the honorable court that the application of Fred Lee Rice, Frank Rutledge, and Thomas Jones for a discharge, in pursuance of said *habeas corpus* proceedings, *was* denied, said order being entered on July 14th, A. D. 1900, in the above-entitled proceeding, and said Fred Lee Rice, Frank Rutledge, and Thomas Jones do hereby appeal from said finding and order to the Supreme Court of the United States, and they pray that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said finding and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

And your petitioners pray that this honorable court will grant a supersedeas and stay of proceedings pending this appeal, and will order and direct th*at* said John C. Ames, United States marshal, as aforesaid, to hold said Fred Lee Rice, Frank Rutledge, and Thomas Jones, and not deliver them to the Canadian authorities in the above

proceedings, and to abide by and await the final decision of the said United States Supreme Court in the above-entitled matter.

SAMUEL H. TRUDE,
Att'y for Petitioners and App'l'ts.

Endorsed: 9304. *In re* Fred L. Rice *et al.* Petition for appeal. Filed July 16, A. D. 1900. T. C. MacMillan, clerk.

And afterwards, to wit, on the 15th day of July, A. D. 1900, the following order was had and entered of record in said cause before the Hon. Christian C. Kohlsaat, judge, to wit:

26½ *In re* Petition of FRED LEE RICE ET AL. for Writ of *Habeas Corpus.* 9304.

And now, on, to wit, the 16th day of July, A. D. 1900, it is ordered that the appeal be, and the same is hereby, allowed as prayed for, and supercedeas and stay of procee-ings is also allowed to the extent that the said John C. Ames, United States marshal as aforesaid, is hereby ordered and directed to hold said Fred Lee Rice, Frank Rutledge, and Thomas Jones and not deliver them to the Canadian authorities in the above proceedings, and to abide by and await the final decision of the Supreme Court of said United States in the above-entitled matter, and that the said appellants enter into appeal bond in the sum of five hundred dollars, with surety, etc., by Thursday, July 19th, A. D. 1900.

27 And afterwards, to wit, on the 8th day of August, A. D. 1900, the following order was had and entered of record in said cause before the Hon. Christian C. Kohlsaat, judge, to wit:

In re Petition of FRED LEE RICE ET AL. for Writ of *Habeas Corpus.* 9304.

Now, on this day, comes S. H. Trude, attorney for the relators herein, and, on notice to Lynden Evans, attorney for said John C. Ames, presents relators' bill of exception- herein and asks that same be sealed and signed by the judge; and it appearing to the court that said Lynden Evans has been out of the city three weeks and has not examined said bill of exceptions, and that same cannot be settled so as to be incorporated into the record herein and transcript of the record filed in supreme court by the return day of the citation issued herein, it is ordered, upon good cause shown, that the time of appellants and relators herein to docket the case and file the record thereof with the clerk of the Supreme Court of the United States be, and the same hereby is, enlarged and extended forty days from the date hereof. It is further ordered that the time for signing and sealing the bill of exceptions herein be extended thirty days from the date hereof. On motion of attorney for relators and notice, leave is granted to relators to file an additional assignment of errors.

27½ And afterwards, to wit, on the 29th day of August, A. D. 1900, there was filed in the clerk's office of said court, in said cause, a bill of exceptions; which said bill of exceptions is in the words and figures following, to wit:

In the United States District Court, Northern District of Illinois, Northern Division, *ss:*

UNITED STATES *ex Rel.* FRED LEE RICE, Frank Rutledge, and Thomas Jones *vs.* JOHN C. AMES, United States Marshal, Northern District of Illinois. } Writ of *Habeas Corpus.* Gen. No., 9304.

Be it remembered that on the 11th day of July, 1900, in this term, when the petition herein was filed and writ ordered issued, it was stipulated and agreed by and between Lynden E. Evans, attorney for John C. Ames, U. S. marshal, and the British consul herein, and S. H. Trude, attorney for relators herein, that all complaints, warrants, mittimuses, documentary and other evidence introduced before Mark A. Foote, commissioner, from June the 2nd, 1900, to July the 10th, 1900, inclusive, before whom the prisoners were brought for hearing and by whom subsequently held for extradition also the docket of said commissioner, showing his entries therein
28 in the above-entitled matter, should and would be produced on the hearing in the above *habeas corpus* matter without the necessity of a writ of certiorari to compel their production in this cause.

And be it remembered that on the 14th day of July, 1900, it was agreed by and between the counsel for the respective parties in open court that all formal and further joining of issues herein be waived and dispensed with, and that the hearing proceed upon the petition for writ of *habeas corpus* and the amended petition thereto, the writ of *habeas corpus* and the return *fo* the said John C. Ames, U. S. marshal, to the said writ, papers, documents, and evidence hereinafter referred to; which was accordingly done.

And be it further remembered that on the 14th day of July, 1900, on the return of the writ of *habeas corpus* herein and in pursuance of the above stipulation made on the 11th day of July, 1900, the parties hereto produced and offered in evidence the following complaints, warrants, mittimuses, documentary and other evidence, together with the transcript of the docket of said Mark A. Foote in said extradition matter from June 2nd, 1900, until the final termination thereof, on July 10th, 1900, which the parties thereto agreed to be the complaints, warrants, mittimuses, depositions, and evidence, etc., introduced before said Mark A. Foote and docket of Mark A. Foote in said extradition matter, and which were introduced and received in evidence in the hearing of the above-entitled matter, the same being in the words and figures as follows, to wit:

UNITED STATES OF AMERICA, } *sct:*
Northern District of Illinois, }

In the Matter of the Application of CLIFTON R. WOOLDRIDGE under the Extradition Convention between the United States of America and Her Britannic Majesty of Date March 25, 1890.

29 Before Mark A. Foote, United States commissioner for said district, specially appointed for the purpose of title sixty-six *fo* the Revised Statutes of the United States, personally come- Clifton R. Wooldridge. of the city of Chicago, in said division and district, police officer of the said city of Chicago, who, being duly sworn, upon his oath says that according to his information, and as deponent verily believes, one Fred Lee Rice, alias Fred Harris, alias "Fritz;" one Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and one Thomas Jones, alias *alias* Frank Ryan, alias Frank Kelly, on or about the 26th day of May, nineteen hundred, feloniously, willfully, and with force did break into a safe in the village of Aurora, province of Ontario, Dominion of Canada, and steal and carry away therefrom seven hundred dollars in money and other valuable things within the jurisdiction and government of the said Dominion of Canada; that the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank *Frank* Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are fugitives from the justice of the said Dominion of Canada, and did, on or about the 28th day of May, 1900, flee into the jurisdiction of the United States for the purpose of seeking an asylum, and that the crime with which the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ry*na*, alias Frank Kelly, are charged is one embraced in the treaty of extradition between the United States and Her Britannic Majesty's government.

(Signed) CLIFTON R. WOOLDRIDGE.

Subscribed and sworn by the above-named Clifton R. Wooldridge this second day of June, A. D. nineteen hundred, before me—

(Signed) MARK A. FOOTE,
U. S. Commissioner.

UNITED STATES OF AMERICA, } *sct:*
Northern District of Illinois, Northern Division, }

In the Matter of the Application of CLIFTON R. WOOLDRIDGE for the Extradition of Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, under the treaty of extradi-
30 tion between the United States and Her Britannic Majesty, concluded on the ninth day of August, 1842, as amended by the extradition convention between the United States of America and Her Britannic Majesty, concluded on the twelfth day of July, 1889.

Before me, Mark A. Foote, United States commissioner, specially appointed and authorized under the provisions of title sixty-six of

the Revised Statutes of the United States to issue warrants for the arrest of fugitives from the justice of the Dominion of Canada, personally comes Alfred Cuddy, of the city of Toronto, in the province of Ontario and Dominion of Canada, police detective, who, being duly sworn, upon his oath deposes and says that, according to his information and as deponent verily believes, one Fred Lee Rice, alias Fred Harris, alias "Fritz;" one Frank Rutledge, alias Frank Dwyer, and one Thomas Jones, alias Frank *alias Frank* Kelly, alias Frank Ryan, on the 22nd day of May, in the year of our Lord nineteen hundred, unlawfully and feloniously, in the night-time, did break open a window in a certain building on Queen street west, in the said city of Toronto, known as the Standard Bank building, with intent to commit larceny therein.

And deponent upon his oath further deposes and says that the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, as deponent verily believes, did, at the village of Aurora, in the province of Ontario and Dominion of Canada, on the 23rd day of May, in the year of our Lord nineteen hundred, in the night-time, unlawfully and feloniously break open a door of the post-office and bank building there in the said village, with intent to commit larceny therein.

And deponent upon his oath further deposes and says that the said Fred Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan,
31 alias Frank Kelly, are fugitives from the said Dominion of Canada, and did on or about the 28th day of May, 1900, flee into the jurisdiction of the United States for the purpose of seeking an asylum therein, and that the crime with which the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are charged is one embraced in the said treaty and convention of extradition between the said United States and Her Britannic Majesty's government.

(Signed) ALFRED CUDDY.

Subscribed and sworn to by the above-named Alfred Cuddy this 2d day of June, A. D. —, before me—

(Signed) MARK A. FOOTE,
Commissioner.

The President of the United States of America to the marshal of the United States for the northern district of Illinois and to his deputies:

Whereas complaint, on oath, has been made to me by Clifton Wooldridge, as police officer of the city of Chicago, in said district, charging that said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did on or about the 26th day of May, A. D. 1900, within the jurisdiction and government of the Dominion of Canada, commit the crime of burglary; that the said

Fred Lee Rice, Frank Rutledge, and Thomas Jones are fugitives from the justice of the said Dominion of Canada and have sought an asylum and are at present found within the territorial limits of the city of Chicago, in the northern division of the northern district of Illinois:

Now, therefore, pursuant to the convention between the United States of America and Her Britan-ic Majesty of date March 25, 1890, you are hereby commanded in the name of the President of the United States of America to apprehend the said Fred Lee
32 Rice, Frank Rutledge, and Thomas Jones and bring their bodies forthwith before me, Mark A. Foote, United States commissioner, wherever they may be found, and that the evidence of their criminality may be heard and considered, and that they may be then and there dealt with according to law for the said offense.

Given under my hand and seal, at Chicago, in the northern division of the northern district of Illinois, this second day of June, in the year of our Lord nineteen hundred, and of the Independence of the United States the 124th year.

(Signed) MARK A. FOOTE,
United States Commissioner.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } ss:

I received this warrant on the 2nd day of June, A. D. 1900, at Chicago, Illinois, and executed the same within my district by arresting the within-named Frank Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, at Chicago, Ills., on the said 2nd day of June, and have their bodies now in court, as commanded.

(Signed) JOHN C. AMES,
United States Marshal,
By GEORGE Q. ALLEN, *Deputy.*

(Filed June 2, 1900.
MARK A. FOOTE,
Commissioner.)

The President of the United States of America to the marshal of the northern district of Illinois and to the keeper of the common jail of the county of Cook, in said district, Greeting:

Whereas Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, have been apprehended and brought before the undersigned, Mark A. Foote, commissioner specially appointed under the provisions of title sixty-six of the Revised Statutes of the United States, and the United States commissioner, for
32½ examination, by virtue of a warrant of the said commissioner issued upon complaint made before him in writing, on oath, charging the said Fred Lee Rice, Frank Rutledge, and Thomas

Jones with burglary committed at Aurora, in the Dominion of Canada, on or about the 26th day of May, 1900, and with being fugitives from the justice of the said Dominion of Canada, and with having fled into the jurisdiction of the United States for the purpose of seeking an asylum therein;

And whereas the examination of the said charge has been adjourned, for good cause appearing, until the fourth day of June, A. D. 1900, at ten o'clock a. m., and the said commissioner has ordered the said Fred Lee Rice, Frank Rutledge, and Thomas Jones to be and appear before the said commissioner at that time for such examination, now, therefore, you, the said marshal, are hereby commanded that you convey the said Fred Lee Rice, Frank Rutledge, and Thomas Jones to the said jail, and that you have them before the said commissioner, at his office in Chicago, in the said district, at the time so fixed for such examination, and thenceforth from day to day until conclusion thereof, and you, the said keeper of the said jail, are hereby commanded that you receive the said Fred Lee Rice, Frank Rutledge, and Thomas Jones into the said jail and them there safely keep in accordance with the command hereof to the said marshal.

Witness the hand and seal of the said commissioner, at Chicago aforesaid, this second day of June, A. D. 1900, and of the Independence of the United States the 124th year.

(Signed) MARK A. FOOTE,
[SEAL.] *U. S. Commissioner, Northern District of Illinois.*

Received from John C. Ames, U. S. marshal, northern district of Illinois, the bodies of the within named this second day of June, A. D. 1900.

(Signed) JOHN L. WHITMAN,
Jailer of Cook County.

(Signature of officer making commitment:)
GEO. Q. ALLEN,
Dep'y U. S. Marshal.

33 I have duly executed this writ by delivering the bodies of the within-named prisoners to the jailer of Cook county, Ills., at Chicago, June 2d, 1900.

(Signed) JOHN C. AMES,
U. S. Marshal,
By GEO. Q. ALLEN, *Dep'y.*

(Filed June 2, 1900.
MARK A. FOOTE,
U. S. Commissioner.)

(*Docket of Mark A. Foote.*)

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

Before Mark A. Foote, United States commissioner for the northern district of Illinois, at the city of Chicago, in the said division and district, and duly appointed pursuant to title LXVI, U. S. Revised Statutes, to issue warrants for the arrest of fugitives from the justice of foreign governments.

Application for Extradition under the Treaty of Extradition between the United States and Great Britain.

FRED LEE RICE (alias Fred Harris, alias "Fritz"), FRANK RUTLEDGE (alias Frank Dwyer, alias Frank Dyer), and THOMAS JONES (alias Frank Kelly, alias Frank Ryan).

1900.

June 2. Complaint of Clifton R. Wooldridge filed. Warrant to apprehend is issued. Warrant returned. Defendants in court in person and by counsel and complainant in person.

The parties being unready for examination, further proceedings herein are adjourned until 10 o'clock a. m., the mittimus being issued therefor.

Additional affidavit of Alfred Cuddy is filed.

Parties in court, the accused in person and by their attorney, S. H. Trude, Esq., and the complainants, Clifton R. Wooldridge and Alfred Cuddy, in person; and the foregoing proceedings being for the purpose of provisional arrest, which purpose has been accomplished, this case is accordingly dismissed.

Before Mark A. Foote, United States commissioner, northern district of Illinois.

In the Matter of the Application of ALFRED CUDDY for the Extradition of Fred Lee Rice, alias Fred Harris, alias "Fritz;"
34 Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Tyan, alias Frank Kelly, under the treaty of extradition between the United States of America and Her Britannic Majesty, concluded on the twelfth day of July, eighteen hundred and eighty-nine.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

Before me, Mark A. Foote, United States commissioner for the northern district of Illinois, specially appointed and authorized under the provisions of title sixty-six of the Revised Statutes of the United States to issue warrants for the apprehension of fugitives

from the justice of the Dominion of Canada, personally comes Alfred Cuddy, of the city of Toronto, in the province of Ontario and Dominion of Canada, police detective, who, being duly sworn, upon his oath deposes and says that he has been heretofore instructed and authorized by the attorney general and other proper and constituted authorities to act as agent for the said Dominion of Canada in the matter of the application herein, and that, according to his information and as deponent verily believes, one Fred Lee Rice, alias Fred Harris, alias "Fritz;" one Frank Rutledge, alias Frank Dwyer, and one Thomas Jones, alias Frank Ryan, alias Frank Kelly, on the 22nd day of May, in the year of our Lord nineteen hundred, in the night-time, willfully and maliciously and forcibly did break and enter into a certain building in Queen street west, in the city of Toronto, province of Ontario and Dominion of Canada, known as the Standard Bank building, with intent to commit larceny therein.

Deponent further upon his said oath deposes and says that, according to his information and as deponent verily believes, the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, the 23rd day of May, in the year of our Lord nineteen hundred, in the night-time, willfully and maliciously and forcibly did break and enter into a certain building in the village of Aurora, province of Ontario and Dominion of Canada, known as the post-office and bank building, with intent to commit larceny therein.

Deponent further says upon his oath that the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are fugitives from the justice of the said Dominion of Canada, and did, on or about the twenty-eighth day of May, nineteen hundred, flee into the jurisdiction of the said United States for the purpose of seeking an asylum therein, and that the crime with which the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are charged is one embraced in the said treaty and convention of extradition between the said United States of America and Her Britannic Majesty's government.

(Signed) ALFRED CUDDY.

Subscribed and sworn to by the above-named Alfred Cuddy this 4th day of June, A. D. 1900, before me—

(Signed) MARK A. FOOTE,
U. S. Commissioner.

Before Mark A. Foote, United States commissioner, northern district of Illinois.

In the Matter of the Application of ALFRED CUDDY for the Extradition of Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, under the treaty of extradition between the United States of America and Her Britannic Majesty, concluded on the ninth day of August, eighteen hundred and forty-two, as amended by the extradition convention between the United States of America and Her Britannic Majesty, concluded on the twelfth day of July, eighteen hundred and eighty-nine.

36 UNITED STATES OF AMERICA, } *sct:*
Northern District of Illinois, Northern Division, }

Before me, Mark A. Foote, United States commissioner for the northern district of Illinois, specially appointed and authorized under the provisions of title sixty-six of the Revised Statutes of the United States to issue warrants for the apprehension of fugitives from the justice of the Dominion of Canada, personally comes Alfred Cuddy, of the city of Toronto, in the province of Ontario and Dominion of Canada, police detective, who, being first duly sworn, upon his oath deposes and says that he has heretofore been instructed and authorized by the attorney general of the province of Ontario and other proper and constituted authorities of the Dominion of Canada to act as agent for the said Dominion of Canada, which is within the jurisdiction and government of Her Britannic Majesty, in the matter of the application herein; that, according to his information and as he verily believes, one Fred Lee Rice, alias Fred Harris, alias "Fritz;" one Frank Rutledge, alias Frank Dwyer, and one Thomas Jones, alias Frank Ryan, alias Frank Kelly, on the 22nd day of May, in the year of our Lord nineteen hundred, in the night-time, did willfully and maliciously and forcibly break and enter into a certain building in Queen street west, in the city of Toronto, province of Ontario and Dominion of Canada, known as the Standard Bank building, which is within the jurisdiction of Her Britannic Majesty.

Deponent further says that said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, on the 23rd day of May, nineteen hundred, in the night-time, willfully and maliciously and forcibly did break and enter into a certain building in the village of Aurora, province of Ontario and Dominion of Canada aforesaid, known as the post-office and bank building, and did commit larceny therein, and then and there took and appropriated to their own use the sum of six hundred dollars ($600.00) in current money of
37 the Dominion of Canada, and postage stamps of said dominion of the value of one hundred and fifty dollars ($150.00), and five hundred shares of stock in the Golden Star Mining Company, a corporation of the Dominion of Canada, and five thousand

shares in the Monte Christo, a corporation of said Dominion of Canada.

Further deponent says that the said Fred Lee Rice, Frank Rutledge, and Thomas Jones did, on the twenty-second day of May, nineteen hundred, in the city of Toronto, province of Ontario and Dominion of Canada aforesaid, commit burglary; and, further, that the said Fred Lee Rice, Frank Rutledge, and Thomas Jones did, in the village of Aurora, province of Ontario and Dominion of Canada aforesaid, on the twenty-third day of May, nineteen hundred, commit burglary.

Further deponent says that said Fred Lee Rice, alias as aforesaid, Frank Rutledge, alias as aforesaid, and Thomas Jones, alias as aforesaid, are fugitives from the justice of the said Dominion of Canada, and did, on or about the twenty-eighth day of May, nineteen hundred, flee into the jurisdiction of the said United States and seek an asylum therein, and that the crimes with which the said Fred Lee Rice, Frank Rutledge, and Thomas Jones are charged are crimes embraced in the said treaty as [illegible] convention of extradition and amendment thereto between the said United States of America and Her Britan-ic Majesty, and that all [illegible] crimes are punishable by the laws of both of said countries named in said treaty and by the laws of the Dominion of Canada and the State of Illinois.

Further deponent saith that the window of the said Standard Bank building was broken and the catch of said window broken and the window forced open and the combination of a safe in said bank building broken off, and that said three persons seized an officer upon his beat in front of said bank building, tied his hands and feet, threw him into a barn near by, and one of said three stood guard over him with a revolver, and took a revolver from said officer, while the others broke said window and damaged said safe,
38 as aforesaid, upon May 22nd, nineteen hundred, and that upon May 23rd, nineteen hundred, said three parties charged, as aforesaid, after committing the above-named burglary in the said village of Aurora, left in said village the revolver of the above-mentioned officer, bound as aforesaid, as affiant is informed and verily believes.

(Signed) ALFRED CUDDY.

Subscribed and sworn to by the above-named Alfred Cuddy this fourth day of June, A. D. nineteen hundred, before me—

(Signed) MARK A. FOOTE,
U. S. Commissioner.

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division, } *sct:*

The President of the United States of America to the marshal of the United States for the said district and to his deputies or to any or either of them, Greeting:

Whereas complaint in writing, under oath, has been this day made before Mark A. Foote, United States commissioner in and for

said district, by Alfred Cuddy, agent in this behalf for the Dominion of Canada, that complainant has just and reasonable grounds to believe that Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, on or about the twenty-second day of May, 1900, in the night-time, willfully, maliciously, and forcibly break and enter into a certain building in the city of Toronto, province of Ontario and Dominion of Canada, with intent to commit larceny therein, and did, on the twenty-third day of May, 1900, in the night-time, willfully, maliciously, and forcibly break and enter into a certain building in the village of Aurora, in said province of Ontario and Dominion of Canada, with intent to commit larceny therein:

These are therefore to command you to apprehend the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, and bring them before the said commissioner, or, in case of his absence or inability to act, before any other judicial officer
39 having jurisdiction to answer the premises, and further to be dealt with according to law, and have you then and there this writ, with a return of your doings hereon.

Witness the hand and seal of the said commissioner, at Chicago aforesaid, this 4th day of June, in the year of our Lord one thousand nine hundred.

(Signed) MARK A. FOOTE,
[SEAL.] *U. S. Commissioner.*

Received this warrant on the fourth day of June, 1900, at Chicago, Ill., and executed the same by arresting the within-named Fred Lee Rice, alias Fred Harris, alias Fritz, and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, at Chicago, Illinois, the fourth day of June, A. D. 1900, and have their bodies now in court as within I am commanded.

Dated Chicago, Ill., June 4th, 1900.
Filed June 4th, 1900.

MARK A. FOOTE, *U. S. Com.*
JOHN C. AMES, *U. S. Marshal,*
By JOHN Q. ALLEN, *Deputy.*

The President of the United States of America to the marshal of the northern district of Illinois, and to the keeper of the common jail of the county of Cook, in said district, Greeting:

Whereas Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, have been apprehended and brought before the undersigned, Mark A. Foote, a United States commissioner for the district aforesaid, for examination, by virtue of a warrant of the said commissioner issued upon a complaint made before him in writing on oath, charging the said Fred Lee Rice, alias Fred Harris, alias

"Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, with burglary in the city of Toronto and village of Aurora, in the province of Ontario and Dominion of Canada, and application for their extradition;

And whereas the examination of the said charge has been adjourned, for good cause appearing, until the fourteenth day of June, A. D. 1900, at ten o'clock a. m.:

Now, therefore, you, the said marshal, are hereby commanded that you convey the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, to the said jail, and that you have them before the said commissioner, at his office, in Chicago, in the said district, at the time so fixed for such examination, and thenceforth from day to day until conclusion thereof; and you, the said keeper of the said jail, are hereby commanded that you receive the said Fred Lee Rice, alias Fred Harris, alias Fritz; Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, into the said jail, and them there safely keep, in accordance with the command hereof to the said marshal.

Witness the hand and seal of the said commissioner, at Chicago aforesaid, this 4th day of June, A. D. 1900, and of the Independence of the United States the 124th year.

(Signed) MARK A. FOOTE,
U. S. Commissioner, Northern District of Illinois.

Received from John C. Ames, U. S. marshal, northern district of Illinois, the bodies of the within named this fourth day of June, A. D. 1900.

(Signed) JOHN L. WHITMAN,
Jailer of Cook County.
GEORGE Q. ALLEN,
Dep'y U. S. Marshal.

I have executed this writ by delivering the bodies of the within-named prisoners to the jailer of Cook county, Ills., at Chicago, Ills., as therein commanded, June 4th, nineteen hundred.

JOHN C. AMES,
U. S. Marshal,
By GEO. Q. ALLEN, *Deputy.*

Filed June 4th, 1900.

MARK A. FOOTE,
U. S. Commissioner.

Docket of Mark A. Foote.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

Before Mark A. Foote, U. S. commissioner for the northern district of Illinois, at the city of Chicago, in said division and
41 district, and duly appointed pursuant to title LXVI, U. S. Revised Statutes, to issue warrants for the arrest *for the arrest* of fugitives from the justice of foreign governments.

Application for Extradition under the Treaty of Extradition Between the United States and Great Britain.

FRED LEE RICE (alias Fred Harris, alias "Fritz"); FRANK RUTLEDGE (alias Frank Dwyer, alias Frank Dyer), and THOMAS JONES (alias Frank Ryan, alias Frank Kelly).

1900.

June 4. Complaint of Alfred Cuddy, agent in this behalf for the government of the province of Ontario, Dominion of Canada, is filed and warrant to apprehend is issued. Warrant returned. Defendants in court, in person and by their attorney. S. H. Trude, Esq., complainant, in person.

Defendants move to quash complaint and warrant and for the discharge of the accused, and each of them, on the ground that the complaint herein is informal, uncertain, and insufficient in law to issue a warrant and detain defendants, being on information and belief. Motion denied. And the parties being unready for examination, further proceedings are adjourned until 10 o'clock a. m., the 14th inst., and mittimus for the commitment of the defendants is issued accordingly.

June 14. Parties in court as before, except that William Greer, duly accredited agent of the Ontario government, appears instead of the above-named complainant.

Stating that certain moneys were taken from the accused at the time of their arrest, defendants move for an order that such funds be placed in court. Complainant opposes the motion, inasmuch as such funds appear to have been taken, and to be held in the nature of the evi-
dence, as provided by the treaty under which
42 these proceedings arose. The motion is denied.

Defendants also move that the prosecution be required to disclose the depositions produced here but not yet offered, and the motion is denied.

The foregoing process having been for the purpose of provisional apprehension and detention, and that purpose having been accomplished, this case is accordingly dismissed.

UNITED STATES OF AMERICA,)
Northern District of Illinois, Northern Division Thereof,) ss:

In the Matter of the Application of the Extradition of FRED LEE RICE (alias Fred Harris, alias "Fritz"); FRANK RUTLEDGE (alias Frank Dwyer, alias Frank Dyer), and THOMAS JONES (alias Frank Ryan, alias Frank Keely), under the extradition treaty between the United States and Great Britain.

Before me, Mark A. Foote, United States commissioner in and for said district and duly authorized by the district court in and for said *said* district to issue warrants for the arrest of fugitives from the justice of foreign governments, personally comes William Greer, who, being first duly sworn, upon his oath says that he is an Ontario government detective for the province of Ontario, duly appointed, qualified, and acting as such and instructed and authorized by the attorney general of the said province to act as the agent of the government of the said province in the matter aforesaid and to prosecute extradition proceedings against Fred Lee Rice (alias Fred Harris, alias "Fritz"); Frank Rutledge (alias Frank Dwyer, alias Frank Dyer), and Thomas Jones (alias Frank Ryan, alias Frank Kelly), hereinafter mentioned, for the offense hereinafter set forth.

And the said William Greer upon his oath further saith that he is informed and believes that on the 23rd day of May, 1900, A. D., at the town of Aurora, in the county of York and province of Ontario, Canada, within the jurisdiction and government of
43 Great Britain, said Fred Lee Rice (alias, as aforesaid), Frank Rutledge (alias, as aforesaid), and Thomas Jones (alias, as aforesaid), did commit the crimes of larceny—that is to say, the said Fred Lee Rice, Frank Rutledge, and Thomas Jones, at the time and place aforesaid, unlawfully did steal from the post-office building in the said town of Aurora a quantity of Canadian postage stamps as follows, to wit: 100 half-cent stamps, 3,500 one-cent stamps, 3,970 two-cent stamps (rose color), 1,300 two-cent stamps (purple color), 83 one-cent stamps, surcharge two cents; 650 three-cent stamps (maple-leaf design), 170 five-cent stamps, and 7 ten cent stamps; and also certificates for a quantity of mining stock, to wit, certificate for 500 shares of stock in the Golden Star Mining Company, 5,000 shares in the Monte Christo Mining Company, 100 shares in the Lily May Mining Company, 533 shares in the Roseland Red Mountain Mining Company, 100 shares in the Nest Egg Gold Mining Company, 250 shares in the Caledonian Consolidated, 500 shares in the Vulcan Gold Mining Company, and a receipt for 1,000 shares in the Silver Bell Mining Company, together with a certain sum of money, to wit, to the amount of $55, all the said postage stamps and certificates of mining stock and money being the property of one H. E. Proctor, and being in all to the value of over $200.

And further affiant says that upon the 23rd of May, A. D. 1900, in the town of Aurora, county of York, in the province of Ontario,

Canada, aforesaid, and within the jurisdiction aforesaid, Fred Lee Rice (alias Fred Harris, alias Fritz) and Frank Rutledge (alias Frank Dwyer), Thomas Jones (alias Frank Ryan, alias Frank Kelly), and James Austin did steal one stallion horse, one road cart, and one set of harness of the value of over $200, the property of Philip G. Button, of the town of Stouffville, county of York aforesaid.

And further deponent says that Fred Lee Rice (alias Fred Harris, alias Fritz), Frank Rutledge (alias Frank Dwyer), Thomas
44 Jones (alias Frank Ryan, alias Frank Kelly), and James Austin, on the 23rd day of May, in the year of our Lord 1900, at the town of Aurora, in the county of York, aforesaid, did by night unlawfully break and enter a certain counting-house, to wit, the counting-house or private bank of one John L. Ross, situate in the said town of Aurora, aforesaid, with intent in so doing to commit an indictable offense, to wit, to steal the moneys of the said John L. Ross then being in the said counting-house or bank, and that the said Fred Lee Rice (alias Fred Harris, alias Fritz), Frank Rutledge (alias Frank Dwyer), Thomas Jones (alias Frank Ryan, alias Frank Kelly), and James Austin, then and there being in said counting-house or bank of the said John L. Ross, unlawfully did steal a certain sum of money, to wit, in the amount of $581.85 of the money of the said John L. Ross, the same consisting of nine $5 bank notes (Canadian), one $5 bank note (American), eight $10 bank notes (Canadian), and one $2 Dominion of Canada note, twenty-two $1 Dominion of Canada notes, one silver dollar of the United States of America, and the sum of $21.85 in silver and copper.

Further deponent says that on the 22nd day of May, in the year of our Lord 1900, in the city of Toronto, in the county of York, province of Ontario, Dominion of Canada, aforesaid, Fred Lee Rice (alias Fred Harris, — "Fritz"), Frank Rutledge (alias Frank Dwyer), Thomas Jones (alias Frank Ryan, alias Frank Kelly), and James Austin, at the city of Toronto, in the county of York aforesaid, did commit the crime of shop-breaking, and did unlawfully, maliciously, and forcibly break and enter into a certain building in Queen street west, in the said city of Toronto, and did commit an indictable offense therein and *was* guilty of a criminal offense known to the law as shop-breaking, contrary to the form of section 413
45 of the Criminal Code, 1892, of the Dominion of Canada aforesaid.

And the said William Greer upon his oath further says he is informed and believes that the said Fred Lee Rice, Frank Rutledge, and Thomas Jones — fugitives from the justice of Great Britain and did, on or about the month of May, 1900, A. D., flee into the jurisdiction of the United States for the purpose of seeking an asylum and *is* now within the said United States, to wit, in the State of Illinois, and that the crimes aforesaid with which the said Fred Lee Rice, Frank Rutledge, and Thomas Jones are charged is such one embraced in the treaty of extradition between the said United States and Great Britain.

(Signed) WILLIAM GREER.

Subscribed and sworn to before me this 14th day of June, A. D. 1900.

(Signed) MARK A. FOOTE,
U. S. Commissioner in and for said District.

(Filed June 14th, 1900.
MARK A. FOOTE,
U. S. Commissioner.)

UNITED STATES OF AMERICA, }
Northern District of Illinois, Northern Division Thereof, } *sct:*

The President of the United States to the marshal of the United States for said district, Greeting:

Whereas complaint has been made, under the oath of William Greer, before Mark A. Foote, United States commissioner in and for said district and duly authorized by the district court of said district to issue warrants for the arrest of fugitives from justice of foreign governments, that Fred Lee Rice (alias Fred Harris, alias Fritz), Frank Rutledge (alias Frank Dwyer, alias Frank Dyer), and Thomas Jones (alias Frank Ryan, alias Frank Kelly) did, on the 23rd day of May, 1900, A. D., at the town of Aurora, in the county of York, province of Ontario, Canada, within the jurisdiction and government of Great Britain, commit the crime of larceny—that is to say, that the said Fred Lee Rice (alias Fred Harris,
46 alias Fritz), Frank Rutledge, alias Frank *F*wyer, alias Frank Dyer, and Thomas Jones, aloas Frank Ryan, alias Frank Kelly, at the time and place aforesaid, unlawfully did steal from the post-office building in the said town of Aurora a quantity of Canadian stamps as follows, to wit: 100 half-cent stamps, 3,500 one-cent stamps, *3,500 one-cent stamps*, 3,870 two-cent stamps (rose color), 1,300 two-cent stamps (purple color), 83 one-cent stamps, surcharge 2 cents; 650 three-cents stamps (maple-leaf design), 170 five-cent stamps, and 7 ten-cent stamps; also certificates for a quantity of mining stock, to wit, certificate for 500 shares of stock in Golden Star Mining Company, 500 shares in the Monte Christo Mining Company, 533 shares in the Ross Red Mountain Mining Company, 100 shares in the Nest Egg Gold Mining Company, 250 shares in the Vulcan Gold Mining Company, and a receipt for 1,000 shares in the Silver Bell Mining Company, together with a certain sum of money, all the said postage stamps and certificates for mining stock and money being the property of one H. E. Proctor, and being in all to the value of over $200.

And further affiant says that upon the 23rd day of May, A. D. 1900, in the town of Aurora, county of York, in the province of Ontario, Canada, aforesaid, and within the jurisdiction aforesaid, Fred Lee Rice (alias Fred Harris, alias Fritz) and Frank Rutledge (alias Frank Dwyer), Thomas Jones (alias Frank Ryan, alias Frank Kelly), and James Austin did steal one stallion horse, one road cart, and one set of harness of over the value of $200, the property of Philip G. Button, of the town of Stouffville, county of York, aforesaid.

And further deponent says that Fred Lee Rice (alias Fred Harris, alias Fritz), Frank Rutledge (alias Frank Dwyer), Thomas Jones (alias Frank Ryan, alias Frank Kelly), and James Austin, on the 23rd day of May, in the year of our Lord 1900, at the town of Aurora, in the county of York, aforesaid, did by night unlawfully break and enter a certain counting-house, to wit, the counting-house or private bank of one John L. Ross, situate in the said town of Aurora aforesaid, with intent in so doing to commit an indictable offense, to wit, to steal the moneys of the said John L. Ross then being in the said counting-house or bank, and that the said Fred Lee Rice (alias Fred Harris, alias "Fritz"), Frank Rutledge (alias Frank Dwyer), and Thomas Jones (alias Frank *Tyan*, alias Frank Kelly), and James Austin then and there being in said counting-house or bank of the said John L. Ross, unlawfully did steal a certain sum of money, to wit, in the amount of $581.85 of the moneys of the said John L. Ross, the same consisting of nine $5 bank notes (Canadian), one $5 bank note (American), eight $10 bank notes (Canadian), and one $2 Dominion of Canada note, twenty-two $1 Dominion of Canada notes, one silver dollar of the United States of America, and the sum of $21.85 in silver and copper.

47 Further deponent says that on the 22nd day of May, in the year of our Lord 1900, in the city of Toronto, in the county of York, province of Ontario, Dominion of Canada aforesaid, Fred Lee Rice (alias Fred Harris, alias "Fritz"), Frank Rutledge (alias Frank Dyer), Thomas Jones (alias Frank Ryan, alias Frank Kelly), and James Austin, at the city of Toronto, in the county of York aforesaid, did commit the crime of shop-breaking and did unlawfully, maliciously, and forcibly break and enter into a certain building in Queen street west, in the said city of Toronto, known as the counting-house of the Standard Bank of Canada, and did commit an indictable offense therein and *was* guilty of the criminal offense known to the law as shop-breaking, contrary to the form of section # 413 of the Criminal Code, 1892, of the Dominion of Canada aforesaid.

That the said Fred Lee Rice, Frank Rutledge, and Thomas Jones are fugitives from the justice of Great Britain, and did on or about the month of May, 1900, A. D., flee into the jurisdiction of the United States for the purpose of seeking an asylum, and that the crimes with which the said Fred Lee Rice, Frank Rutledge, and Thomas Jones are charged *is* each one embraced within the treaty of extradition between the United States and Great Britain.

These are therefore to command you to apprehend the said Fred Lee Rice, Frank Rutledge, and Thomas Jones (alias as aforesaid), and bring them before the said commissioner to answer the premises, and further to be dealt with according to law and the provisions of said treaty.

In witness whereof I hereunto set my hand, at office, in said district, this 14th day of June, A. D. 1900.

MARK A. FOOTE,

[SEAL.] *U. S. Commissioner in and for said District.*

Filed July 10th, 1900.

The President of the United States of America to the marshal of the northern district of Illinois, and to the keeper of the common jail of the county of Cook, in said district, Greeting:

Whereas Fred Lee Rice (alias Fred Harris, alias Fritz), and Frank Rutledge (alias Frank Dwyer, alias Frank Dyer), and Thomas Jones (alias Frank Ryan, alias Frank Kelly) have been apprehended and brought before the undersigned, Mark A. Foote, United States commissioner for the district aforesaid, for examination, by virtue
48 of a warrant of the said commissioner, issued upon complaint made before him in writing on oath, charging the said Fred Lee Rice, Frank Rutledge, and Thomas Jones with larceny, burglary, and shop-breaking committed at the city of Aurora and the city of Toronto, in the Dominion of Canada, on or about the 23rd and 22nd day of May, 1900, and with being fugitives from the justice of the said Dominion of Canada, and with having fled into the jurisdiction of the United States for the purpose of seeking an asylum therein;

And whereas the examination of the said charge has been adjourned for good cause appearing until the 25th day of June, A. D. 1900, at 10 o'clock a. m., and the commissioner has ordered the said Fred Lee Rice, Frank Rutledge, and Thomas Jones to be and appear before the said commissioner: Now, therefore, you, the said marshal, are hereby commanded that you convey the said Fred Lee Rice, Frank Rutledge, and Thomas Jones to the said jail, and that you have them before the said commissioner, at his office in Chicago, in the said district, at the time so fixed for such examination and thenceforth from day to day until the conclusion thereof; and you, the said keeper of the said jail, are hereby commanded that you receive the said Fred Lee Rice, Frank Rutledge, and Thomas Jones into the said jail, and them there safely keep in accordance with the command hereof to the said marshal.

Witness the hand and seal of the said commissioner, at Chicago aforesaid, this 14th day of June, A. D. 1900, and of the Independence of the United States the 124th year.

(Signed) MARK A. FOOTE,
U. S. Commissioner, Northern District of Illinois.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *sct:*

The President of the United States to the marshal of the United States for the northern district of Illinois, and to the keeper of the common jail of Cook county, in the State of Illinois, Greeting:

Whereas complaint has been made under the oath of Wil-
49 liam Greer, an Ontario Government detective for the province of Ontario, duly appointed, qualified, and acting as such, and instructed and authorized by the attorney general of the said province to act as the agent of the government of the said province to prosecute extradition proceedings against Fred Lee Rice (alias Fred Harris, alias "Fritz"), and Frank Rutledge (alias Frank Dwyer), and Thomas Jones (alias Frank Ryan, alias Frank Kelly)

before Mark A. Foote, United States commissioner in and for said district, and duly authorized by the district court of the said district to issue warrants for the arrest of fugitives from the justice of foreign governments, that the said Fred Lee Rice, Frank Rutledge, and Thomas Jones did, as complainant is informed and believes, on the 23rd day of May, 1900, at the town of Aurora, in the county of York and province of Ontario, Canada, within the jurisdict- and government of Great Britain, commit the crimes of larceny—that is to say, the said Fred Lee Rice, Frank Rutledge, and Thomas Jones, at the time and place aforesaid, unlawfully did steal from the post-office building in the said town of Aurora a quantity of Canadian postage stamps as follows: 100 half-cent stamps, 3,500 one-cent stamps, 3,970 two-cent stamps (rose color), 1,300 two-cent stamps (purple color), 83 one-cent stamps, surcharge 2 cents; 650 three-cent stamps (maple-leaf design), 170 five-cent stamps, and seven ten-cent stamps; and also certificate for a quantity of mining stock, to wit, certificate for 500 shares of stock of the Golden Star Mining Company, 5,000 shares in the Monte Christo Mining Company, 100 shares in the Lily May Mining Company, 100 shares in the Nest Egg Gold Mining Company, 250 shares in the Caledonian Consolidated, 500 shares in the Vulcan Gold Mining Company, and a receipt for 1,000 shares in the Silver Bell Mining Company, together with a certain sum of money, to wit, to the amount of $55, all the said postage stamps and certificates for mining stock and money being the property of one H. E. Proctor and being, in all, to the value of over $200; and

That the said Fred Lee Rice, Frank Rutledge, and Thomas Jones did, upon the 23rd day of May, 1900, in the town of Aurora aforesaid, steal one stallion horse, one road cart, and one set of harness, of the value of over $200, the property of one Philip G. Button, of the town of Stouffville, county of York aforesaid; and

That the said Fred Lee Rice, Frank Rutledge, and Thomas Jones did, on the 23rd day of May, 1900, at the town of Aurora aforesaid, by night, unlawfully break and enter a certain counting-house, to wit, the counting-house or private bank of one John L. Ross, situate in the said town of Aurora, with intent in so doing to commit an indictable offense, to wit, to steal the moneys of the said John L. Ross then being in the said counting-house or bank; and that the said Fred Lee Rice, Frank Rutledge, and Thomas Jones, then and there being in the said counting-house or bank of the said John L. Ross, unlawfully did steal a certain sum of money, to wit, in the amount of $581.85 of the moneys of the said John L. Ross, the same consisting of nine $5 bank notes (Canadian), one $5 bank note (American), eight $10 bank notes (Canadian), and one $2 Dominion of Canada note, twenty-two $1 Dominion of Canada notes, one silver dollar of the United States of America, and the sum of $21.85 in silver and copper; and

That the said Fred Lee Rice, Frank Rutledge, and Thomas Jones, on the 22nd day of May, 1900, in the city of Toronto, county of York, province of Ontario, Dominion of Canada aforesaid, did commit the crime of shop-breaking and did unlawfully, maliciously, and

forcibly break and enter into a certain building in Queen street west, in the said city of Toronto, known as the counting-house of the Standard Bank of Canada, and did commit an indictable
51 offense known to the law as shop-breaking, contrary to the form of section 413 of the Criminal Code, 1892, of the said Dominion of Canada; and

That said William Greer upon his said oath further saith that he is informed and believes that the said Fred Lee Rice, Frank Rutledge, and Thomas Jones are fugitives from the justice of Great Britain and did in or about the month of May, 1900, flee into the jurisdiction of the United States for the purpose of seeking an asylum and are now within the said United States, and that the crimes aforesaid with which the said Fred Lee Rice, Frank Rutledge, and Thomas Jones are charged is such one embraced in the treaty of extradition between the United States and Great Britain; and

Whereas the said Fred Lee Rice, Frank Rutledge, and Thomas Jones have been apprehended and brought before the said commissioner for examination by virtue of a warrant of the said commissioner issued upon the said complaint; and

Whereas the examination of the said charge has been set for hearing at ten o'clock in the forenoon on Monday, the 25th day of June, nineteen hundred:

Now, therefore, you, the said marshal, are hereby commanded that you convey the said Fred Lee Rice, alias Fred Harris, alias "Fritz;" Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, to the said —, and that you have *him* before the said commissioner, at his office, room 550 Monadnock block, in Chicago, in said district, at the time fixed for such examination, and thenceforth from day to day until conclusion thereof; and you, the said keeper of the said jail, are hereby commanded that you receive the said Fred Lee Rice, alias Fred Harris, alias Fritz; Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, into the said jail and them there safely keep, in accordance with the command
52 hereof, to the said marshal.

Witness the hand and seal of the said commissioner, at Chicago aforesaid, this fourteenth day of June, A. D. nineteen hundred, and of the Independence of the United States *of* the 124th year.

[SEAL.] MARK A. FOOTE,
United States Commissioner for the Northern District of Illinois.

Receipt of Jailer.

Received from John C. Ames, U. S. marshal, northern district of Illinois, the bodies of the within-named defendants, Fred Lee Rice, alias Fred Harris, alias Fritz; Frank Rutledge, alias Frank Dwyer,

and Thomas Jones, alias Frank Ryan, alias Frank Kelly, this fourteenth day of June, A. D. (1900) nineteen hundred.

JOHN L. WHITMAN,
Jailer of Cook County.

(Signature of officer making commitment:)
PETER A. ROWE,
Deputy U. S. Marshal.

Filed July 12th, 1900.

MARK A. FOOTE,
U. S. Commissioner.

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

The President of the United States for the northern district of Illinois *and* the keeper of the common jail of the county of Cook, in the State of Illinois, Greeting:

Whereas complaint has been made under the oath of William Greer, an Ontario government detective for the province of Ontario, in the Dominion of Canada, duly appointed, qualified, and acting as such, and instructed and authorized by the attorney general of the said province to prosecute extradition proceedings against Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, before Mark A. Foote, United States commissioner in and for said northern district of Illinois, and duly authorized by the district court of the United States in and for said northern district of Illinois to issue warrants for the arrest of fugitives from justice of foreign governments, that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge,
53 alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, as complainant is informed and believes, on the 23rd day of May, nineteen hundred, at the town of Aurora, in the county of York and province of Ontario, in the Dominion of Canada, within the jurisdiction and government of Great Britain, commit the crimes of larceny—that is to say, the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Kelly, alias Frank Ryan, at the time and place aforesaid, did steal from the Post-office building in the said town of Aurora a quantity of Canadian postage stamps, as follows: 100 half-cent stamps, 3,500 one-cent stamps, 3,970 two-cent stamps (rose color), 1,300 two-cent stamps (purple color), 83 one-cent stamps, surcharge two cents; 650 three-cent stamps (maple-leaf design), 170 five-cent stamps, and seven ten-cent stamps, and also certificates for a quantity of mining stock, to wit: certificate for 500 shares of stock of the Golden Star Mining Company, 5,000 shares in the Monte Christo Mining Company, 100 shares in the Lily May Mining Company, 533 shares in the Rossland Red Mountain Mining Company, 100 shares in the Nest Egg Gold Mining Company, 250 shares in the

Caledonian Consolidated, 500 shares in the Vulcan Gold Mining Company, and a receipt for 100 shares in the Silver Bell Mining Company, together with a certain sum of money, to wit, to the amount of $55, all the said postage stamps and certificates for mining stock and money being the property of one H. E. Proctor, and being in all to the value of over two hundred dollars ($200).

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, upon the 23rd day of May, A. D. 1900, in the town of Aurora, county of York, and province of Ontario, in the Dominion of Canada and within
54 the jurisdiction and government of Great Britain, steal one stallion horse, one road cart, and one set of harness, of the value of over two hundred dollars ($200), the property of Philip G. Botton, of the town of Stouffville, in the county of York, aforesaid; and

That the said Fred Lee Rice, alias Fred Harris, alias Fritz, and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, did, on the twenty-third day of May, nineteen hundred, at the town of Aurora aforesaid, by night, unlawfully break and enter a certain counting-house, to wit, the counting-house or private bank of one John L. Ross, situate in the said town of Aurora, with intent, in so doing, to commit an indictable offense, to wit, to steal the moneys of the said John L. Ross, then being in the said counting-house or bank; and that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, then and there being in the said counting-house or bank of the said John L. Ross, unlawfully did steal a certain sum of money, to wit, in the amount of five hundred eighty-one dollars and eighty-five cents ($581.85), of the moneys of the said John L. Ross, the same consisting of nine $5 bank notes (Canadian), one $5 bank note (American), eight ten-dollars bank notes (Canadian), and one two-dollar Dominion of Canada note, twenty-two $1 Dominion of Canada notes, one silver dollar of the United States of America, and the sum of $21.85 in silver and copper; and

That the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, on the 22nd day of May, nineteen hundred, in the city of Toronto, in the county of York and Dominion of Canada aforesaid, did commit the crime of
55 shop-breaking and did unlawfully, maliciously, and forcibly break and enter into a certain building in Queen street west, in the said city of Toronto, known as the counting-house of the Standard Bank of Canada, and did commit an indictable offense, known to the law as shop-breaking, contrary to the form of the statutes of the said Dominion of Canada, to wit, section 413 of the Criminal Code of 1892; and

The said William Greer upon his oath further saith that he is informed and believes that the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank

Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are fugitives from the justice of Great Britain, and did, on or about the month of May, nineteen hundred, flee into the jurisdiction of the United States for the purpose of seeking an asylum and are now within the United States, and that the crimes aforesaid with which the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, are charged are crimes embraced in the treaty of extradition between the United States and Great Britain; and

Whereas the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, have been apprehended and brought before me, the said Mark A. Foote, commissioner, as aforesaid, for examination on the foregoing charges; and

Whereas on such examination it ap-ears to me that there is probable cause to believe the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank
56 Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, guilty of said offense:

You, the said marshal, are hereby commanded that you convey *to* the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Keely, to the jail of the said county of Cook, and you, the said keeper of said jail, are hereby commanded that you receive the said Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer, alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, into said jail and them there safely and securely keep until there be discharged therefrom by due course of law.

In witness whereof I have hereunto set my hand and affixed the seal, at Chicago, in said district, this 10th day of July, 1900, and of the Independence of the United States the 124th year.

[SEAL.] MARK A. FOOTE,
U. S. Commissioner, Northern Dist. Ill.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I have executed the foregoing mittimus, as therein commanded, this 10th day of July, A. D. nineteen hundred.

JOHN C. AMES,
U. S. Marshal,
By PETER A. ROWE,
Chief Deputy.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Received from John C. Ames, U. S. marshal, northern district of Illinois, the bodies of the above-named Fred Lee Rice, alias Fred Harris, alias "Fritz," and Frank Rutledge, alias Frank Dwyer,

alias Frank Dyer, and Thomas Jones, alias Frank Ryan, alias Frank Kelly, this 10th day of July, A. D. nineteen hundred.

JOHN L. WHITMAN,
Jailer of Cook County,
By WILL T. DAVIES, *Jail Clerk.*

Before Mark A. Foote, United States commissioner for the northern district of Illinois, and duly authorized by the district court of the United States for said district under the provisions of title LXVI of the Revised Statutes of the United States to issue warrants
57 for the *ar the* arrest of fugitives from the justice of foreign governments.

In the Matter of the Application of WILLIAM GREER for the Extradition of Fred Lee Rice (alias "Fritz"), Frank Rutledge (alias Frank Dwyer, alias Frank Dyer), and Thomas Jones (alias Frank Ryan, alias Frank Kelly) under the extradition treaty between the United States and Great Britain.

Docket.

1900.

June 14. Complaint of William Greer, agent, etc., is filed and warrant to apprehend is issued.

10 a. m., defendants in court, in person and by their counsel, Messrs. S. H. Trude and I. B. Hudson, Esq.; complainant, in person and by his counsel, Lynden Evans, Esq.; and, on motion of defendants that time is necessary to examine the complaint of William Greer, filed this day, and, if necessary, to prepare a defense, hearing is set for 10 o'clock a. m., the 25th inst., and mittimus is issued accordingly.

June 25th, 10 a. m. Present: Parties and counsel as before. Defendants move for discharge for want of jurisdiction of United States commissioner; also on the ground that complaint is informal, insufficient, and void. Motion overruled. Prosecution offers in evidence certain papers, certified by W. L. Sewell, consul of the United States, and bound in book form, containing index, certificates, etc. (pp. 1–15), depositions (pp. 16–100), and certificate (pp. 101–104). Defendants object to certificate of W. L. Sewell, United States consul (pp. 1, 2, 3), as informal, insufficient, and irregular—not in accordance with the laws of extradition *g*iverned by the United States statutes. Oqjection overruled. Defendants preserve further *o*njections until the papers are severally read. The proffered — is held to be properly certified, and counsel for the prosecution reads therefrom the depositions of Mrs.
58 Jane Banbury, John L. Ross, Ivan Perregrinne, Alymer Clarke, William J. Stevenson, Eli Braund, Henry Fleury, William S. Wilson, Frank Griffiths, William J. Towns, Louis Rhinehart, Arthur Winters, Eleazer Frisby, Fung

Toy, George Lemon, Frank T. Daville, John Miller, Charles Holman, Thomas Smith, Arthur Andrews, John C. Querie, Hermas E. Proctor (p. 63), Mrs. Mary Proctor, Miss Violet Sheppard, Hermas E. Proctor (p. 71), Peter C. Savage, Ansel D. Carley, Norman Henderson, Philip Button, Albert Albin, Joseph Richards, Mrs. Grace Valentine, Charles Harrison, Louise Rutledge, Eldridge Stanton, and William Greer.

Prosecution offers in evidence papers marked "shop-breaking," certified by W. L. Sewell, consul of the United States. Defendants object to the same for the reason that the consular certificate is informal, irregular, and iusufficient, not in accordance with the laws of extradition governed by the statutes of the United States. Objection is overruled. The proffered evidence is held to be properly certified, and counsel for prosecution reads therefrom the depositions of Jerold Ward, John H. Hyland, Alfred Cuddy, and May Valentine; and further proceedings herein are adjourned until tomorrow at ten o'clock.

June 26, 10 a. m. Present: Parties and counsel as before. Resuming the reading of the depositions marked "shop-breaking," commenced yesterday, counsel for prosecution reads therefrom the depositions of Louisa Rutledge, Joseph Richards, Albert Albin, William Greer, and Charles Harrison, defendant-renewing their objections to the same, and further proceedings are adjourned until 10.30 a. m. tomorrow, owing to the absence of a material witness whom the prosecution desires to introduce at this point, and who is a witness in a trial in a court.

59

June 27, 10.30 a. m. Present: Parties and counsel as before. William Schubert, William H. McGrath, and John L. Sullivan, witnesses for the prosecution, are sworn and examined.

The prosecution offers in evidence the deposition of De Toulouse de Lautrec, certified by P. Gorman, vice U. S. counsel general. Defendants object that the certificate is informal, insufficient, not in accordance with the United States statutes. Objection overruled. Deposition is read.

Prosecution offers in evidence the statutes of Canada, and the part thereof known as "Criminal Code of 1892," and reads from "part 30" thereof all of sections 413, 407, 410, 411, 412; also all "title 6, part 34;" also sections 414, 416, 417, 303; 1st, 2nd, 3d, and 4th paragraphs of section 304; sections 305, 306, sections 61, 62, and reserves the right to read other parts later, if desired. (Being property of Chicago Law Library, same is withdrawn from the files herein.)

Defendants object to certificate of date July 12, 1900, as not complying fully with requirements as to evidence, being such as would make it evidence for these purposes before Canadian tribunals. Objections overruled.

Defendants move for discharge on the ground that the evidence is insufficient, and on the ground that on the 14th instant jurisdiction was lost by continuance of more than 10 days' violation of statutes. Motion denied. Continued to 9.30 a. m. tomorrow.

June 28. Parties in court at 9.30 a. m. as before. Defendants argue motion for discharge for want of jurisdiction. Motion overruled. The prisoners, by their counsel, announce as follows: Thomas Jones will stand and produce no testi-
60 mony. Frank Rutledge will stand, and claims discharge. The matter is taken under advisement as to said Jones and Rutledge until 10 o'clock a. m., July 6, 1900, and further proceedings as to said Rice are adjourned until 10 o'clock a. m., July 6, 1900.

July 6. The accused are produced before the commissioner; and it appearing that counsel for prosecution is absent from Chicago and unable to attend here today, further proceedings are adjourned until 10 o'clock a. m. Tuesday, the 10th instant, in the presence of the accused and without objection from them.

July 10, 10 a. m. Present: Parties and counsel as before; and William S. Young, George E. Shippy, Albert Butler, George A. Weimer, and Fred Lee Rice are sworn and examined in behalf of the defendant Fred Lee Rice. W. P. Davis, introduced by the prosecution, is sworn and examined; argument of counsel is heard, and the commissioner finds that there is probable cause to believe the defendants guilty, as charged in the complaint herein, and it is ordered that they stand committed to await the action of the proper authority in the matter.

Defendants take an exception.

MONDAY, *April* 30, *A. D.* 1900.

The district court of the United States for the northern division of the northern district of Illinois met at 10 o'clock a. m. pursuant to adjournment.

Present: The Hon. Christian C. Kohlsaat, judge of said court, presiding; the clerk, and marshal.

It is hereby ordered that Mark A. Foote, a United States commis-ioner for the northern district of Illinois, be, and he hereby is, appointed and authorized in all cases arising under extradi-
61 tion treaties between the Government of the United States and foreign governments and under the statutes enacted in pursuance thereof, upon proper complaint made before him, to issue warrants for the apprehension and commitment of persons charged with having committed within the jurisdiction of such foreign governments any of the crimes for which under such treaties such per-

sons may be extradited, and also to hear and consider the evidence of criminality adduced against such persons, and in general to take such steps in such cases in order that the provisions of said treaties and the acts of Congress in relation thereto may be carried into effect.

Before Mark A. Foote, U. S. commissioner and duly appointed under the provisions of title LXVI of the Revised Statutes of the United States to issue warrants for the arrest of fugitives from the justice of foreign governments.

Application for Extradition under the Treaty of Extradition between the United States of America and Great Britain.

In re FRED LEE RICE, alias, etc.; FRANK RUTLEDGE, alias, etc.; THOMAS JONES, alias, etc.

I, Mark A. Foote, commissioner as aforesaid, hereby certify that the accompanying documents and exhibits are a true, full, and correct copy of the record of the complaints, process, proceedings, and evidence in the above matter.

Witness my hand and seal at Chicago, in said division and district, this 14th day of July, A. D. nineteen hundred.

(Signed) MARK A. FOOTE,
U. S. Commissioner N. D. Illinois and Duly Authorized Herein.

The foregoing was all of the evidence introduced in this case on the hearing herein.

And the court thereupon considered all the material allegations and all the points raised in said petition and amendment thereto and heard counsel for the respective parties herein, and, being fully advised in the premises, denied the application of Fred Lee Rice, Frank Rutledge, and Thomas Jones for discharge and dismissed the petition herein; to which ruling of the court and dismissal of the petition herein the relators, by their counsel, then and there duly accepted.

Forasmuch as the matters above set forth do not fully appear of record, the said Fred Lee Rice, Frank Rutledge, and Thomas Jones tender this their bill of exceptions and pray that the same may be signed and sealed by the judge of this court pursuant to law, which is accordingly done this 29 day of August, 1900.

C. C. KOHLSAAT, *Judge.* [SEAL.]

O K.
S. H. TRUDE,
Att'y for Relators.

Presented Aug. 8, 1900.

KOHLSAAT, *J.*

Endorsed: 9304. *In re* Fred Lee Rice *et al.* Filed August 29, A. D. 1900. T. C. MacMillan, clerk.

And afterwards, to wit, on the 16th day of July, A. D. 1900, the following order was had and entered of record in said cause before the Hon. Christian C. Kohlsaat, judge, to wit:

In re Petition of FRED LEE RICE ET AL. for Writ of *Habeas Corpus*.
9304.

It is ordered that a citation issue to John C. Ames, marshal for the United States in and for the northern district of Illinois, and that Clark J. Tisdel be, and hereby is, appointed to serve said citation by reading same and by leaving copy thereof with said John C. Ames, United States marshal, and also to notify said marshal that a supersedeas has been ordered in the above matter.

And afterwards, to wit, on the 18th day of July, A. D. 1900, there was filed in the clerk's office of the district court a bond in said cause, said bond being in the words and figures following, to wit:

Know all men by these presents that we, Fred Lee Rice, Frank Rutledge, and Thomas Jones, as principals, and Herbert S.
62 Griswold, as surety, are held and firmly bound unto John C. Ames, United States marshal for the northern district of Illinois, in the full and just sum of five hundred dollars, to be paid to the said John C. Ames, United States marshal, certain attorney, executor, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of July, in the year of our Lord one thousand nine hundred.

Whereas lately, at a term of the United States district court for the northern district of Illinois, in a suit pending in said court, *In re* The United States *ex rel.* Fred Lee Rice, Frank Rutledge, and Thomas Jones, "*habeas corpus* matter," against John C. Ames, United States marshal, a judgment was rendered against the said Fred Lee Rice, Frank Rutledge, and Thomas Jones, denying their application for discharge from imprisonment, and the said Fred Lee Rice, Frank Rutledge, and Thomas Jones having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John C. Ames, United States marshal, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Fred Lee Rice, Frank Rutledge, and Thomas Jones shall prosecute said appeal to effect and answer all damages and costs if they fail

to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FRED LEE RICE. [SEAL.]
FRANK RUTLEDGE. [SEAL.]
TOM JONES. [SEAL.]
HERBERT S. GRISWOLD. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved July 19, 1900.
KOHLSAAT, *Judge.*

STATE OF ILLINOIS, } ss:
County of Cook, }

63 On this 18th day of July, A. D. 1900, personally appeared before me Fred Lee Rice, Frank Rutledge, and Thomas Jones, the within-named principals, and acknowledged that they signed, sealed, and delivered the within bond for the purposes therein set forth.

WILL T. DAVIES, [SEAL.]
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

Herbert S. Griswold, being first duly sworn, on oath says that affiant resides at 2818 South Park Ave., Chicago, Illinois; that affiant is the owner of the premises known as number 4009 & 4011 Wentworth Ave., Chicago, Illinois, which is improved with two-story building; that the deed of same is on record in his name; that said premises is worth six thousand dollars and incumbered for three thousand dollars; that affiant is worth four thousand dollars over and above his liabilities.

(Signed) HERBERT S. GRISWOLD.

Subscribed and sworn to before me this 18th day of July, 1900.
CHAS. A. BUELL.
U. S. Commissioner, Nor. Dist. of Ill.

Endorsed: 9304. United States district court, northern dist. of Illinois, northern division. *In re* Fred Lee Rice *et al. vs.* John C. Ames, United States marshal. Bond. Filed July 19, 1900. T. C. MacMillan, clerk. B.

And afterwards, to wit, on the 29th day of August, A. D. 1900, the following order was had and entered of record in said cause before the Hon. Christian C. Kohlsaat, judge, to wit:

In re FRED LEE RICE ET AL. for Writ of *Habeas Corpus.* 9304.

This cause coming on to be heard on motion of the relators, by their attorney, S. H. Trude, Esq., to be admitted to bail, come the

parties, by their attorneys, and the court being fully advised in the premises, it is ordered by the court that said motion be, and the same hereby is, overruled and denied.

63½ And afterwards, to wit, on the 29th day of August, A. D. 1900, there was filed in said court an additional bill of exceptions in said cause, said additional bill of exceptions being in the words and figures following, to wit:

In the District Court United States, No. Dist. Ill.

In re FRED LEE RICE, FRANK RUTLEDGE, and THOMAS JONES. Case No. 9304.

Be it remembered that on the 29th day of August, A. D. 1900, in open court, appeared S. H. Trude, attorney for the relators herein, and on notice to all parties moved that bail be fixed for each of said relators, and that said relators be admitted to reasonable bail under rules 34 and 36 of the United States Supreme Court, and the court, having heard the arguments of counsel, denied said motions; to which rulings of the court in denying said motions counsel then and there for relators duly excepted.

Forasmuch as the above and foregoing does not appear of record, the relators tender this bill of exceptions and ask that same be sealed and signed by the judge, which is accordingly done this 29th day of August, A. D. 1900.

KOHLSAAT, *Judge.* [SEAL.]

Endorsed: 9304. In dist. court U. S., no. dist. Ill. *In re* Fred Lee Rice *et al.* Additional bill of exceptions. Filed Aug. 29, 1900, at 10 o'clock a. m. T. C. MacMillan, clerk. S. H. Trude, att'y for relators.

64 And afterwards, to wit, on the 8th day of August, A. D. 1900, there was filed in the clerk's office of said court an additional assignment of errors in said cause, said assignment of errors being in the words and figures following, to wit:

In the Supreme Court of the United States, United States of America.

UNITED STATES *ex Rel.* FRED LEE RICE, Frank Rutledge, and Thomas Jones, Appellants,
vs.
JOHN C. AMES, United States Marshal for the Northern District of Illinois, Appellee.

Writ of *Habeas Corpus.* Case No. 9304.

Additional Assignment of Error.

There was also manifest error in this, that the said Mark A. Foote took the said matter under advisement on June 28th, 1900, as to relators Frank Rutledge and Thomas Jones, and ordered them into

custody after they had then and there and at all times refused to offer any evidence on their part on the ground, which was repeatedly urged, that said commissioner had no jurisdiction; that any discretion which said Mark A. Foote could possibly have had relating to granting continuances for time to procure evidence and prepare for hearing ended when no necessity for exercising such discretion any longer existed; that so many continuances on said complaints and so long confinement of the relators and such taking of the relators' cases under advisement was an absolute abuse of discretion.

S. H. TRUDE.
Att'y for Relators and Appellants.

Endorsed: Case No. 9304. United States district court, nor. dist. Illinois. U. S. *ex rel.* Fred Lee Rice *et al.* Additional assignment of errors. Filed by leave of court Aug. 8, 1900, at 10 o'clock a. m. T. C. MacMillan, clerk. S. H. Trude, att'y for relators.

65 And afterwards, to wit, on the 29th day of August, A. D. 1900, there was filed in the clerk's office of said court a stipulation in said cause, said stipulation being in the words and figures following, to wit:

In the United States District Court, Northern District of Illinois, Northern Division.

UNITED STATES *ex Rel.* FRED LEE RICE, Frank Rutledge, and Thomas Jones *vs.* JOHN C. AMES, United States Marshal, Northern District of Illinois.	Writ of *Habeas Corpus.* Gen. No., 9304. Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, by S. H. Trude, attorney for the relators, and Lynden Evans, attorney for John C. Ames, United States marshal, that the clerk of the above district court, in making up a transcript of the record in the above matter for the Supreme Court of the United States, to be used in pursuance of the appeal heretofore prayed and allowed, shall omit from said transcript of the record—

All depositions taken before examining magistrates in Canada and the certificates of authentication thereto attached, the same being pages 31 to 163, inclusive, of the bill of exceptions filed herein August 29, 1900;

And shall omit from said transcript of the record all the oral testimony taken before Mark A. Foote, the same being pages 164 to 254, inclusive, of the bill of exceptions filed herein August 29, 1900;

And shall omit from said transcript of the record the allegations in the petition for writ of *habeas corpus* and assignment of errors filed herein which referred to the insufficiency of said certificates of authentication;

And shall omit from said transcript of the record the allegations in said petition and the assignment of error which raised the question of the insufficiency of depositions and oral evidence taken before said Mark A. Foote.

S. H. TRUDE,
Attorney for the Relators.
LYNDEN EVANS,
66 *Att'y for John C. Ames, U. S. Marshal.*

Endorsed: Gen. No., 9304. In the district court of the U. S., northern district of Ill., northern division. United States *ex rel.* Fred Lee Rice, Frank Rutledge, and Thomas Jones *vs.* John C. Ames, U. S. marshal, northern district of Illinois. Stipulation. Filed Aug. 29, 1900, at 10 o'clock a. m. T. C. MacMillan, clerk. B. S. H. Trude, att'y for the relators.

And afterwards, to wit, on the 30th day of August, A. D. 1900, there was filed in the clerk's office of said court a præcipe for transcript of the record of the proceedings, said præcipe being in the words and figures following, to wit:

In the United States District Court, Northern District of Illinois, Northern Division, *ss:*

UNITED STATES *ex Rel.* FRED LEE RICE, Frank Rutledge, and Thomas Jones *vs.* JOHN C. AMES, United States Marshal, Northern District of Illinois.	Writ of *Habeas Corpus.* Case No. 9304.

To the clerk of the above-entitled court, northern district of Illinois:

You will please prepare a transcript of the record in the cause to be filed in the office of the clerk of the Supreme Court of the United States under the appeal heretofore perfected to said court, and omit from said transcript pages 31 to 254, inclusive of the bill of exceptions filed August 29th, 1900, and also omit the allegations in the petition for writ of *habeas corpus* and assignment of errors which have reference to the insufficiency of the certificates of authentication and the insufficiency of the evidence, in accordance with the joint stipulation of the parties hereto to that effect, filed August 29th, 1900.

Said transcript must be prepared in accordance to law and the rules of the United States Supreme Court, and so as to be filed in the office of the clerk of said Supreme Court of the United States on or before the 15th day of September, 1900.

S. H. TRUDE,
Att'y for Relators and Appellants.

Endorsed: Case No. 9304. In the United States dis. court, northern dist. of Illinois, northern division. United States *ex rel.* Fred Lee Rice, Frank Rutledge, and Thomas Jones *vs.* John C. Ames, United

States marshal, northern dist. of Illinois. Præcipe for transcript of the record. Filed Aug. 30, 1900. T. C. MacMillan, clerk. S. H. Trude, att'y for relators.

67 In the District Court of the United States for the Northern District of Illinois, Northern Division.

I, T. C. MacMillan, clerk of the district court of the United States of America for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of the proceedings had in case No. 9304, *In re* petition of Fred Lee Rice, Frank Rutledge, and Thomas Jones for writ of *habeas corpus*, prepared in accordance with joint stipulation of parties herein, and præcipe for a transcript of the record filed in said cause, as the same appears from the record and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, in my office, in Chicago, in said district, this 12th day of September, A. D. 1900.

[Seal of Dist. Court U. S., Northern Dist. Illinois, 1855.]

T. C. MACMILLAN, *Clerk.*

68 UNITED STATES OF AMERICA, *ss:*

To John C. Ames, United States marshal, northern district of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an appeal filed in the clerk's office of the district court of the United States for northern district of Illinois, in the matters of Fred Lee Rice, Frank Rutledge, and Thomas Jones, petitioners for release on *habeas corpus*, and appellants herein, and you are defendant, to show cause, if any there be, why the judgment rendered against the said appellants, as in the said judgment mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Christian C. Kohlsaat, judge U. S. district court, nor. dist. Ill., this 16th day of July, in the year of our Lord one thousand nine hundred.

KOHLSAAT, *Dist. Judge.*

[Endorsed:] No. 9304. Supreme Court of the United States. *In re* Fred Lee Rice *et al.* Citation to the Supreme Court of the United States. Filed July 16, A. D. 1900. T. C. MacMillan, clerk. B.

69 On this 16th day of July, in the year of our Lord one thousand nine hundred, personally appeared Clark J. Tisdel before me, the subscriber, and makes oath that he delivered a true copy of the within citation to John C. Ames, U. S. marshal, northern district of Illinois.

CLARK J. TISDEL.

Sworn to and subscribed the 16th day of July, A. D. 1900.

[Seal of M. E. Patterson, Notary Public, Cook County, Ill.]

M. E. PATTERSON,
Notary Public, Cook Co., Ill.

Endorsed on cover: File No., 17,905. N. Illinois D. C. U. S. Term No., 420. Fred Lee Rice, Frank Rutledge, and Thomas Jones, appellants, *vs.* John C. Ames, United States marshal for the northern district of Illinois. Filed September 17th, 1900.

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Office Supreme Court U. S.
FILED
DEC 17 1900
JAMES H. McKENNEY,
Clerk.

No. 420.
Brf. of Trude for Appts. (on mo. to adv. etc.)
Filed Dec. 17, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 420.

FRED LEE RICE, FRANK RUTLEDGE AND THOMAS JONES

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

BRIEF OF APPELLANTS IN ANSWER TO BRIEF OF APPELLEE ON MOTION TO DISMISS OR AFFIRM OR ADVANCE THE CAUSE.

S. H. TRUDE,
ATTORNEY FOR APPELLANTS.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 420.

FRED LEE RICE, FRANK RUTLEDGE AND THOMAS JONES

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

Brief of Appellants in answer to Brief of Appellee on motion to dismiss or affirm or advance the cause.

MAY IT PLEASE THE COURT:

The appellants were arrested in the city of Chicago by the police on June 1, 1900, without any process whatever, and were told that they were wanted in Canada. (Rec., 2.) On June 2, 1900, Police Officer Clifton R. Wooldridge, of Chicago, made a complaint on information and belief, which was viod (Rec., 21), before U. S. Commissioner Mark A. Foote, who issued a warrant. The appellants were then taken by John C. Ames, U. S. marshal, appellee, out of the custody of the police and brought before said commissioner; thereupon the police asked that the cause be continued to June 4th. (Rec., 3.)

After the appellants were committed to jail, Police Officer Alfred Cuddy, of Toronto, lodged an additional affidavit with the commissioner (Rec., 25), which was also void for insufficiency. (Rec., 21, 22.) On June 4, 1900, another complaint was lodged before said commissioner by Arthur Cuddy, a police officer of Canada (Rec., 3), which complaint was also void and conferred no jurisdiction upon the commissioner (Rec., 25, 26); thereupon the appellants moved to dismiss said proceedings for want of jurisdiction in the commissioner (Rec., 3, 31), and thereupon the cause was continued to June 14th on motion of Arthur Cuddy, the complainant. On June 14th appellants were brought into court and a new complaint by William Greer was lodged with the commissioner. The appellants moved the commissioner to require the Canadian government to return to them the money which was taken from them at the time of their arrest, and for an order that such funds be placed in court, which was overruled. Appellants also moved to see the depositions from Canada which were then in court, and motion denied (Rec., 31), and that time be given appellants to examine the complaint of William Greer then filed (Rec., 42); whereupon said cause was continued to June 25, 1900. On June 25, 1900, appellants moved for a discharge on the ground that the complaints were void and conferred no jurisdiction, and especially on the ground that the commissioner had lost all possible jurisdiction by continuing the cause for eleven days, contrary to Section 6 of the Treaty with Great Britain proclaimed March 25, 1900, and in violation of the Statutes of the United States and the Laws of Illinois governing proceedings in extraditional cases. (Rec., 4, 5, 6, 42.)

Depositions offered in evidence and adjournment taken to June 26th and further evidence heard, and again continued to the 27th and further evidence heard; whereupon appellants moved the commissioner to discharge the defendants for want of jurisdiction; motion denied and cause continued to June 28. (Rec., 44.) June 28th appellants moved for discharge for want of jurisdiction and insufficiency of the evidence; motion overruled, and Thomas Jones and Frank Rutledge told the commissioner they would offer no evidence, and denied authority in the commissioner to proceed further. (Rec., 6, 44.) Thereupon proceedings were taken by said commissioner under advisement to July 6, 1900. (Rec., 6, 44.) July 6th counsel for the prosecution being absent from Chicago, further proceedings were adjourned to July 10th, and then some evidence was introduced as to Fred Lee Rice only, and appellants were all held to await the action of the proper authority in the matter. On July 11th appellants filed a petition for a writ of *habeas corpus* under oath, showing that they were restrained of their liberty by the appellee and confined in the Cook county jail, and were imprisoned and held in custody under the color and authority of the Constitution and Statutes of the United States relating to the return of fugitives from justice; that their imprisonment was illegal and in violation of the Constitution and laws of the United States for reasons which then followed. (Rec., 2.) Said petition contained a complete history of the proceedings from the time of appellants' arrest until the time of filing the petition, together with a copy of Section 6 of the Treaty of 1889 and the laws that appellants contended should have been followed. (Rec., 2, 4, 5.) A copy of the *mittimus* was attached to said peti-

tion. (Rec., 7, 8, 9.) Writ of *habeas corpus* issued and made returnable on July 14th. By stipulation in open court at the time of filing the petition the parties hereto agreed that the dockets, complaints, warrants, evidence and all the transactions and proceedings and papers before Mark A. Foote, commissioner, were to be produced in court on the hearing without a *certiorari*. (Rec., 20.) Amended petition, under oath, filed July 14th, alleges that Section 5270 of Title 66 of the Revised Statutes of the United States is unconstitutional in that it authorized the District Court to appoint an inferior court for the purpose of extradition purposes; that said commissioner exercised judicial powers contrary to Section 1, Article 3 of the Constitution of the United States (Rec., 15); that the appellants on June 4th applied to the commissioner to be admitted to bail and that bail was not at any time granted them. (Rec., 16.) On the return to the writ, July 14th, it was then stipulated between the appellants and appellee that all formal and further joining of issues be waived and that the hearing proceed upon the petition for writ of *habeas corpus*, the amended petition thereto, the writ of *habeas corpus* and the return thereto, papers, documents and evidence before said commissioner embraced in the stipulation of July 11th. (Rec., 20.) Hearing was then had, and the court certified in the bill of exceptions that he thereupon considered all the material allegations and all the points raised on said petition and amendment thereto, and being fully advised in the premises, denied the application for discharge, dismissed the petition and remanded appellants into the custody of appellee (Rec., 16); to which ruling of the court the petitioners herein then and there duly excepted. (Rec., 45.)

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Appellants filed their assignment of errors and prayed an appeal, which was allowed, and the District Court, under Rule 36 of this court, granted a supersedeas and stay of proceedings, and directed the officer of this court, to wit: the appellee herein, in open court, not to deliver the appellants to the Canadian authorities, but to hold them to await the action of this Honorable court. (Rec., 18, 19.) Citation was issued and served on the appellee (Rec., 51), amount of the supersedeas bond fixed at $500, which bond was given and approved by the court. (Rec., 41-47.) By stipulation, in making up the transcript of the record for this court, the clerk omitted the depositions taken before examining magistrates in Canada and the oral testimony taken before Mark A. Foote and the assignment of error thereon.

And on the 29th day of August, after the appeal was perfected, the appellants moved the District Court, under Rules 34 and 36 of this court, that bail be fixed and that they be admitted to bail, which motion was overruled and excepted to (Rec., 48); and on the 8th day of August additional assignment of error filed by leave of court.

August 8, 1900, order extending time for filing record and bill of exceptions. (Rec., 19.)

August 29th bill of exceptions signed and filed. (Rec., 45.).

ASSIGNMENT OF ERRORS.

(Rec., 17, 18 and 48.)

That there is manifest error in this, to wit: Mark A. Foote, the United States commissioner and extradition commissioner, who heard the evidence and held your petitioners in said matter to await the action of the secretary of state, had no jurisdiction on June the 14th, A. D. 1900, to issue the warrant for their said commitment, dated that day, because the complaint of William Greer was on information and belief and not a sufficient complaint as required by Section 10 of the Treaty with Great Britain and Section 5270, Title 66, Revised Statutes of the United States.

There is also manifest error in this, to wit: that said Mark A. Foote lost all possible jurisdiction in the premises by continuing said proceedings on June 14, 1900, to June 25, 1900, for a period more than ten days; that said continuance was not in conformity to any law and contrary to and in violation of Section 6 of the Treaty with Great Britain proclaimed March 25, 1890, contrary to and in violation of the laws of the United States and of the laws of the State of Illinois regulating the mode of procedure of such examining magistrates in such cases made and provided.

There is also manifest error in this, to wit: that said Mark A. Foote had no jurisdiction in the premises, because Section 5270, Title 66, is unconstitutional (1), because it does not provide for any mode of procedure relat- commissioners appointed in extradition matters by the District Courts of the United States; (2) Section 5270,

ing to continuance, change of venue, bail, etc., before Title 66, is unconstitutional because Congress had no power to confer upon a district judge of the United power to create such inferior courts; (3) because said magistrate is exercising judicial power in the premises, and Congress has not created such court and established its jurisdiction, powers, etc.

There is also manifest error in this, to wit: that your petitioners were denied bail by the said Mark A. Foote.

There is also manifest error in this, to wit: that the finding and judgment of Christian C. Kohlsaat, judge of the District Court of the United States in and for the Northern District of Illinois, denied the application of your petitioners for discharge in said *habeas corpus* proceedings, which finding and judgment were excepted to by your petitioners at the time it was entered; whereas, by the law of the land, the said judgment ought to have discharged your petitioners and set them at liberty, and the said Fred Lee Rice, Frank Rutledge and Thomas Jones pray the judgment aforesaid may be reversed and annulled and that your petitioners may be set at liberty in this *habeas corpus* proceeding.

There is also manifest error in this, to wit: that the said Mark A. Foote took the matter under advisement on June 28, 1900, as to relators, Frank Rutledge and Thomas Jones, and ordered them into custody after they had then and there and at all times refused to offer any evidence on their part on the ground, which was repeatedly urged, that said commissioner had no jurisdiction; that any discretion which said Mark A. Foote could possibly have had relating to granting continuances for time to procure evidence and prepare for hearing ended when

no necessity for exercising such discretion any longer existed; that so many continuances on said complaints and so long confinement of the relators and such taking of the relators' cases under advisement was an absolute abuse of discretion.

I.

The only reason advanced by appellee in his brief why this appeal, which has been allowed and perfected in every detail, should be dismissed, is: "That there is no provision in the law in force when this appeal was prayed and allowed for appeal in this class of cases," and cites *Bucklin* v. *U. S.*, 159 U. S., 680, in support of his position, which he says is the only direct adjudication he has found.

The principle announced in the case of *Bucklin* v. *United States*, 159 U. S., 680, and chiefly relied upon by counsel for appellee on his motion to dismiss this appeal, in no way affects or has any application to the right of appeal in this case. Bucklin was sentenced to the penitentiary on a verdict finding him guilty of perjury, and the only way he could have that judgment reviewed was on a writ of error. He had no right to appeal before the taking effect of the judiciary act of March 3, 1891, and it was held that act did not give him a right of appeal which before that act he did not have; that his remedy was by writ of error as before.

Sec. 763 of the Habeas Corpus Act, Rev. Stat. U. S., which was in force before and at the time of the passage of the Judiciary Act of 1891, provided:

> "From the final decisions of any court, justice or judge inferior to the Circuit Court, upon an applica-

> tion for a writ of *habeas corpus* or upon such writ when issued, an appeal may be taken to the Circuit Court for the district in which the cause is heard. (1) In the case of any person alleged to be restrained of his liberty in violation of the constitution or of any law or treaty of the United States." * * *

Section 784, as amended in 1885, provided for an appeal from the final judgment of such Circuit Court to the Supreme Court.

By the 5th Section of the Judiciary Act of March 3, 1891, it was expressly provided:

> "That appeals or writs of error may be taken from the District Courts or from the existing Circuit Courts to the Supreme Court in the following cases:"

two of which cases so enumerated are as follows:

> "In any case that involves the construction or application of the Constitution of the United States."
>
> "In any case in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question."

The Judiciary Act of March 3, 1891, did not cut off the right to appeal which then existed or change the form of reviewing the cause to a higher court from appeal to writ of error.

Bucklin v. *U. S.*, 159 U. S., 680.

The Act of 1891 simply changed the right of the relator or respondent in *habeas corpus* cases, if the facts came within any of the provisions enumerated in Sec. 5, to appeal direct to this court, instead of the Circuit Court, as was done *in re Lennon*, 150 U. S., 393.

Ornelius v. *Ruyz*, 161 U. S., 502.

The right to appeal was not repealed by that act. Section 14 of that act is:

> "And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writs of error in the preceding Sections 5 and 6 of this act are repealed."

The right to appeal, as it then existed, was not inconsistent with the provisions of the Act of March 3, 1891; it was the right to have the appeal taken to the Circuit Court that was cut off by that act and another court expressly substituted in place of the Circuit Court, to wit: the Supreme Court of the United States, if the construction of a treaty or the constitutionality of an act of Congress was involved.

In *Re* Lennon it was said, in passing on the words, "unless otherwise provided by law," in Section 6 of that act:

> "The words are manifestly inserted out of abundant caution, in order that any qualifications of the jurisdiction by contemporaneous or subsequent acts should not be construed as taking it away, except when expressly so provided. Implied repeals were thereby intended to be guarded against."

On motion to dismiss the appeal, in *Shute* v. *Keyser*, 149 U. S., 651, which was an appeal from the Supreme Court of the Territory of Arizona to this court, on the ground that by reason of the Act of 1891 the appeal was improperly allowed, it was held: "There was no express repeal of the provisions of the prior acts regulating appeal or writs of error in such other cases from these courts to this."

> "There is nothing to indicate an intention that the judgments and decrees of the Supreme Courts of the Territories should not be susceptible of review in

> the class of cases in which there was no appeal or writ of error to the Circuit Court of Appeals. And the acts regulating appeals or writs of error to or from this court were not repealed except to the extent specified."

And the motion to dismiss was denied.

And a motion to dismiss was denied under similar facts in *Gunzales* v. *Cunningham,* 164 U. S., 619, which was a *habeas corpus* case, decided in 1896. It was there held that, where appeals would lie under acts of Congress allowing appeals in force at the time of the passage of the Act of 1891, the right of appeal was not affected by the Act of 1891.

In the case of *in re Lennon,* 150 U. S., p. 393, which was an appeal from the Circuit Court of the Northern District of Ohio in a *habeas corpus* case, this court, speaking through Chief Justice FULLER, said:

> "While the right of appeal from the judgment of Circuit Courts directly to this court in all cases is taken away by the Act of March 3, 1891, that right still exists in the cases designated in Section 5 of that act." (Citing:
>
> *Nishimura Ekin* v. *United States,* 142 U. S., 651.
>
> *Horner* v. *United States* (No. 2), 143 U. S., 570.

In the case of *Ornelas* v. *Ruyz,* 161 U. S., 502, which was an extradition proceeding and was an appeal from the decision of the judge in a District Court of the United States in the Western District of Texas, discharging the appellees therein from custody in an extradition proceeding, in which they were held by a commissioner of the Circuit Court on the complaint of the Mexican consul, the court said:

"As the construction of the treaty was drawn in question, the appeal was taken directly to this court, and the District Court rightly required petitioners, under Rule 34, to enter into recognizance to answer its judgment."

Carter v. *Roberts,* 177 U. S., 496.

Cincinnati, Hamilton, etc. v. *Thiebaud,* 177 U. S., 619.

Scott v. *Donald,* 165 U. S., 58.

The case of *Bryant* v. *United States,* 167 U. S., 104, was an appeal from the final order of the Southern District of the District of New York upon a writ of *habeas corpus* sued out by the appellant to obtain his release from the custody of the marshal of that district, who held him by a *mittimus* issued by a commissioner of a Circuit Court in an extradition proceeding.

Shute v. *Keyser,* 149 U. S., p. 651.

Cramer v. *Washington State,* 168 U. S., 127.

If Congress used the words appeals and writs of error advisedly in Section 5 of the Act of 1891, as counsel for appellee suggests in his brief, then it must be held that Congress did not intend to abolish the right to appeal as it then existed; otherwise Congress would have omitted from that act the words "appeals and said writs of error may be taken," etc., or, if Congress intended to limit appeals, would have done so by saying in what cases appeals might be taken.

It is manifest that if this appeal had been taken to the Circuit Court or Circuit Court of Appeals the motion to dismiss would be good.

Most of the courts have held that, independent of statutory provisions, a decision in a *habeas corpus* case

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is not of that final and conclusive character necessary to support a review by writ of error. (Encyc. Pl. & Pr., Vol. 9, foot p. 1072.) And, if appellants in this case had sued out a writ of error, a motion could have been made to dismiss it for that reason. (*Ex parte Siebold,* 100 U. S., 371.) If Congress had undertaken to pass an act designed especially to provide for allowing the appellants to appeal their case from the Northern District of Illinois to this court, they could not make the appellants' right to appeal any clearer or more positive than their right to appeal now in pursuance of Section 5 of March 3, 1891.

And, if counsel for appellee's contention is true, then this court is powerless to entertain an appeal from a judgment remanding the prisoners in any *habeas corpus* case —a power which was so admirably wielded by this court in the case of *In re Neagle,* 135 U. S., 1, discharging from custody Deputy United States Marshal David Neagle, whose brave act shielded the life of the late Mr. Justice Stephen J. Field, former justice of this court, then in the discharge of his duties, from the murderous assault made by David S. Terry.

In re Siebold, 100 U. S., 371.

II.

I enter upon the discussion of the other points raised in counsel for appellee's brief, namely, the motions to affirm under rule six and to advance the cause on the docket under protest; first, that counsel is asking this court, under the pretenses of a motion to dismiss the appeal, to consider, pass upon and determine on this motion, and at this time, all the points and issues involved, and errors

assigned, which this court has repeatedly held it will not do.

Second, since counsel has asked to have the judgment affirmed on the statement that this appeal and errors assigned are frivolous and taken for delay and has referred to the assignment of errors in a way which gives prominence in his brief to the minor assignments and scarcely touches on the important assignment of errors, it possibly calls upon the appellants to enter into a full discussion at this time of the merits of the case.

The complaint of Wm. Greer utterly fails to set forth a crime in the demanding country.

The averments in the complaint relating to shop breaking on May 22, 1900, are the only ones in the complaint by which any endeavor was made to show that the acts complained of were crimes and punishable by the laws in force in the Dominion of Canada and these averments are mere conclusions of the rankest form without the averment of any facts whatever and are therefore wholly fatal to confer jurisdiction. (Rec., 33.)

State v. *Swoop*, 72 Mo., 399.
Bundy v. *Hart*, 46 Mo., 460.
Ex parte Smith, 3rd McLean's Rep., 121.
People ex rel Lawrence, 56 N. Y., 182.
In re Hayward, 1 Sand Sup. Ct. (N. Y.) R., 701.
In re Fetter, 23 N. J. L., 311.

Shop-breaking was not an offense at common law. No common law burglary is alleged. The acts complained of on May 22 charge nothing more than a trespass.

The usual and customary words, such as *felonious*,

burglarious and *felonious intent,* are omitted and "did commit an indictable offense" without naming what offense was committed therein and then concluding "contrary to statute," etc., are wholly defective.

Whorton's Pl. & Pr., Sec. 265.
State v. *Swope,* 72 Mo., 401.

The first charge on information and belief in complaint of Wm. Greer (Rec., 33) and also the second and third charges are wholly insufficient to charge a common law larceny because no value is averred; the words "sum of money" and figures $55, $200, do not show that it was current or lawful money of the United States, what kind of money of what country is meant—this is fatal.

Brown v. *People,* 173 Ill., 34.
$380.50 in money held not sufficient, *Ib.*
Wharton Pl. & Pr., Secs. 213-218.
Reside v. *State,* 10 Tex. App., 675.

"A large sum of money, to wit: the sum of $1,100" was held fatal by the Supreme Court of N. Y. in 16 Hun., 476.

"The said sum of fifteen hundred dollars did steal, take and carry away contrary, etc.," held bad.

People v. *McDonald,* 48 Mich., 492.
State v. *Denton,* 74 Md., 517.

"One pound eleven shillings" held insufficient.

Rex v. *Furneaux, Russ, Ryan* (British Crown Cases), 334.
State v. *Thompson,* 42 Ark., 517.
King v. *Flowers,* 5 Barn. & Cress., 736.

"Sundry promissory notes for payment of money of value $80, the chattels of A," charges no larceny.

Stewart v. *Com.*, 4 Serg. & R. (Pa.), 194.
People v. *Williams*, 35 Cal., 671.
State v. *Hoke*, 84 Ind., 137.
State v. *Hinkley*, 4 Minn., 345.
State v. *Oakley*, 10 S. W. Rep., 17.
Rhodes v. *Com.*, 2 Duv. (Ky.), 159.
Kearney v. *State*, 48 Md., 16.
People v. *Ball*, 14 Cal., 101.

The allegation in the complaint regarding the shop breaking is *was* guilty and does not show which one of appellants is referred to.

This complaint of Wm. Greer does not charge that anything was *feloniously* done,—this is also fatal.

Scudder v. *State*, 62 Ind., 13.
Gregg v. *State*, 64 Ind., 223.
Ridgeway v. *State*, 41 Tex., 231.
Baker v. *Com.*, 2 Va. Cas., 122.

The omission of *felonious* reduces the act to trespass.

Savine v. *State*, 85 Ind., 576.

A complaint charging the larceny of coin must allege that it is current money of the U. S., or of some other country.

People v. *Ball*, 14 Cal., 101.
State v. *Parker*, 1 Haust Crim. C. (Del.), 9.
Lord v. *State*, 20 N. H., 404.
Leptwich v. *Com.*, 20 Gratt (Va.), 716.

Must allege also the value of the coin.

Boyle v. *State*, 37 Tex., 359.
Beery v. *U. S.*, 2 Cal., 186.

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The complaint does not charge a larceny at common law, because it does not aver a taking and carrying away.

Gregg v. *State*, 64 Ind., 223.
1 Hale P. C., 504, 508, 2 *id.*, 184.
Spittorf v. *State*, 108 Ind., 171.

A complaint under oath, as provided by the treaty, is wholly insufficient to confer jurisdiction unless all the essential elements and facts necessary to constitute the particular crime charged are set forth in the complaint.

In re Farez, 7 Blatchf., 35.
Ex parte Hart, 63 Fed. Rep., 259.
Ex parte Morgan, 20 Fed. Rep., 299.

"All legal intendments in a case of this kind are to avail the prisoner, *Id.*"

Ex parte Smith, 3d McLean, 121.
State v. *Richardson*, 34 Minn., 115.

In the case of *People, ex rel. Lawrence*, 56 N. York Rep., 183, the court, in passing upon the Act of Congress providing for extradition between the states, said:

> "The false pretenses are not set out. * * * In an indictment the false pretenses must be averred. * * * It cannot be held that any less degree of certainty is admissible in an affidavit * * * than in an indictment for the same offense. If any distinction exists in this respect the affidavit should be more full and specific. It is usually the *ex parte* statement of an accuser, while an indictment is by a body of men standing indifferent between the parties."

"The complaint must positively and explicitly state what the prisoner is called upon to answer."

Smith v. *State*, 21 Neb., 556.
U. S. v. *Tureaud*, 20 Fed. Rep., 623.
Lippman v. *People*, 175 Ill., 113.

Sec. 3 of Fugitive from Justice Act of Illinois, *supra*, is:

> "Upon complaint under oath, *setting forth the offense and such other matters as are necessary to bring the case within the provisions of law.*"

Sec. 348, Hurd's Rev. Stat. (Ill.), p. 627, as to complaints, is:

> "Upon complaint made to any judge or justice of the peace that any such criminal offense has been committed, he shall examine on oath the complainant, and any witness produced by him, shall reduce the complaint to writing and cause it to be subscribed and sworn to by the complainant; *which complaint shall contain a concise statement of the offense charged to have been committed.*"

And the Supreme Court of this state in construing that statute held that in order to confer jurisdiction the facts must be fully set out to show the crime charged.

Haush v. *People*, 75 Ill., 487.

So it will be observed that there is no legislation in Illinois regarding a complaint that makes it possible to confer jurisdiction by a complaint not good by the terms of the treaty.

Where an essential element necessary to charge an offense has been omitted in complaint it is a matter of substance; no jurisdiction is conferred upon the magistrate and such fatal defects can be availed of at any stage of this proceeding even in this court, if raised for the first time on appeal.

Donaldson v. *Hazen*, Hemp. (U. S.), 423.
Eilenberger v. *Nelson*, 64 Ill. App., 277.
Chicago & E. Ill. Ry. Co. v. *Hines, Admr.*, 132 Ill., 161.

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1 Chitty's Pl. (7th Am. Ed.), 722, 723.
Dillard v. *St. L. K. G. & N. R. R. Co.*, 58 Mo., 68.
Mathie v. *McIntosh*, 40 Wis., 120.
Riley v. *City of Lowell*, 117 Mass., 76.
Stearly's appeal, 3 Grant (Pa.), 270.
Doctor et al. v. *Hartman*, 74 Ind., 231.

The complaints being void the magistrate had no jurisdiction. Where the magistrate loses jurisdiction, his judgment is void and *habeas corpus* is the proper remedy to relieve from imprisonment thereunder.

Ex parte Siebold, 100 U. S., 371.

The complaints before Marke A. Foote were insufficient complaints under oath in that they were on information and belief and therefore void and gave said Marke A. Foote no jurisdiction in the extradition matter in which the appellants were held and deprived of their liberty.

Ex parte Lang, 6 Fed. Rep., 34.
Johnston v. *U. S.*, 87 Fed. Rep., 189.
Ex parte McCabe, 46 Fed. Rep., 363.
Lipman v. *People*, 175 Ill., 101.
State v. *Swope*, 72 Mo., 399.
In re Helbonn, 1st Parker Crim. Rep. (N. Y. S. C.), 436.
In re Kelly, 25 Fed. Rep., 268.

William Greer in the third paragraph of his complaint says "That he is informed and believes, etc.," and in the next to the last paragraph says he "is informed and believes."

When it is not clear what portion of a complaint is on

information and belief, and what, if any, is positively sworn to, all is on information and belief.

Siegmund v. *Ascher*, 37 Ill. App., 122.
Stirlen v. *Neustadt*, 36 Ill. App., 378.
The B. T. Co. v. *Balding Bros. & Co.*, 40 Ill. App., 378.
Commerce Vault v. *Hurd et al.*, 73 Ill. App., 107.
Chi. Ex. Co. v. *Ill. State B'd of Ed.*, 77 Ill. App., 350.

III.

The second assignment of error I most respectfully submit is of the most vital importance for several reasons.

The decision of this Honorable Court on the merits in this case will settle the questions of what statutes and mode of procedure extradition commissioners ought to follow in international extradition cases. No two commissioners can be found in this district who proceed alike in international extradition cases—some say continuances can be granted for longer periods than the state law allows—others say not—some refuse change of venues on the ground that Sec. 1014 of the U. S. Rev. Stat. does not apply—some grant changes of venue on the ground that they should proceed as examining magistrates in each state—some refuse bail, others grant it—some say when change of venue is granted the case should go to the next nearest justice as provided by our state law, others say the state law does not apply, etc.; and when counsel says this assignment is frivolous I do not believe he fully appreciates the importance of having these things settled.

The second assignment of errors does not attack the treaty on the ground that it is unconstitutional as counsel erroneously *asserts by his brief*, but calls for the construction of Sec. 6 of the treaty of 1889 in as positive and direct manner as it is possible to raise it.

The construction of that section has never been passed on in any court in this country or England, if it has I have been unable to find it.

Judge C. C. Kohlsaat of this district would not have granted a supersedeas herein and ordered the marshal of his court to hold the appellants to await the final orders of this court if he had thought that the questions were not submitted in good faith and of sufficient weight and importance to get the decision of this court thereon.

The said Marke A. Foote lost all possible jurisdiction in the extradition proceeding by continuing the said cause from June 14, 1900, to June 25, 1900, the same being a period of more than ten days, and every order entered in said proceeding thereafter was absolutely null and void and of no effect.

U. S. v. *Horton*, 2 Dill., 94.
Mahr v. *Young*, 13 Wis., 710.
Gamage v. *Law*, 2 Johns, 192.
Crichton v. *Beebe*, 7 Ill. App., 272.
The People v. *Jarrett*, 7 Ill. App., 566.
State v. *Swope*, 72 Mo., 399.
In re Thomas Kane, 10 N. Y. Leg. Obs., 129.
In re Thomas Kane, 14 How., 103.
In re MacDonald, 11 Blatch., 79.

Section 627 Revised Statutes of the United States is "commissioners of the Circuit Courts shall exercise the

powers, which are or may be expressly conferred upon commissioners of Circuit Courts."

The act abolishing Circuit Court Commissioners authorized U. S. Commissioners to be appointed by the District Courts with the same powers that Circuit Court Commissioners formerly held.

Section 1014 of the Revised Statutes of the United States provides: "That for any crime or offense against the United States the offender may, by any justice or judge of the United States or any commissioner of the Circuit Court to take bail, etc., * * * and *agreeably to the usual mode of process against offenders in such state* be arrested and imprisoned, etc., or bailed as the case may be.

Section 727 Revised Statutes of the United States provides that the commissioners of the Circuit Courts, etc., shall have authority to hold for security of the peace and good behavior in cases arising under the constitution and laws of the United States as may be exercised by any judge or justice of the peace of *respective states* in cases cognizable before them.

Article 10 of the Ashburton treaty with Great Britain of 1842 providing for the extradition of fugitives from justice provides, *that this shall only be done upon such evidence of criminalty as according to the laws of the place* where the fugitive or person so charged shall be found would justify his apprehension and commitment for trial if the crime or offense had there been committed and provides that a warrant may be issued by judges or other *magistrates.*

Section six of the treaty between the United States and Great Britain, proclaimed March 25, 1890, is:

"The extradition of fugitives under the provisions of this and of the said tenth article shall be carried out in the United States and Her Majesty's dominions respectively in *conformity to the laws regulating extradition for the time being in force in the surrendering state.*"

Section 67, Article 7 of Chapter 79, Revised Statutes of Illinois, governing continuances by justices of the peace and examining magistrates, in force July 1, 1872, is as follows:

"The justice before the commencement of the trial may continue a case *not exceeding ten days* at any one time on consent of the parties or on any good cause shown. Either party shall be entitled to such continuance if it shall appear upon his oath, or that of a credible witness, that he cannot safely go to trial on account of the absence of material testimony."

Section 3, Chapter 60, Revised Statutes of Illinois, called the Fugitive from Justice Act, which was enacted as auxiliary to the United States statutes on extradition between states, in force July 1, 1874, is as follows:

"When a person is found in this state, charged with an offense committed in another state or territory, and liable, by the constitution and laws of the United States, to be delivered over upon the demand of the executive of such other state or territory, any judge, justice of the peace or police magistrate may, upon complaint under oath, setting forth the offense, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person charged before the same or some other judge, justice of the peace or police magistrate within this state, *to answer to such complaint as in other cases.*"

It is also clear that as a U. S. commissioner Mark A. Foote could not have continued from June 14th to June 25th in the manner in which he did without losing jurisdiction either under Section 724 or 1014, Rev. St. U. S.

Sec. 5270 Rev. St. U. S., relating to international extradition, does not provide for any mode of procedure whatever except that a person charged may be brought before said commissioner to the end that evidence of criminalty may be heard and considered; and it is fair to presume that Congress at the time of the passage of said Section 5270 intended that commissioners appointed by the courts to act as extradition commissioners should proceed in accordance with the sections of the statutes governing U. S. commissioners. There can be no good reason advanced why they should not proceed directly in accordance with Sect. 724 or 1014 of U. S. Rev. S.

In re Mineau, 45 Fed. Rep., 189, which was a habeas corpus case in an extradition matter, it was held that under Sect. 727 of the Rev. St. of U. S. the commissioner was authorized to proceed and had power to arrest in order to carry out treaty obligations.

In the MacDonald case, 11 Blatchf., 79, it is said:

> "The practice in analogous cases in the state wherein the proceedings are conducted, is said, in one of the cases referred to to be a guide to the commissioner in the conduct of the investigation. If this be so then it is quite pertinent to refer to a familiar practice, sanctioned by the courts of this state where persons charged as fugitives are sought to be returned to another state."

In re MacDonald, 11 Blatchf., 79, and *In re* Ludwig, 32 Fed. Rep., 774, the question of discretion as to adjournments was discussed.

It will be noticed that the adjournments were not made contrary to and in violation of the statutes. The court *in re* MacDonald said no abuse of discretion appeared in that case, if it did relief could be had on habeas corpus.

Certainly no magistrate on the theory of discretion can continue causes contrary to all laws, including Section 6 of the treaty of 1899, which was not in force when these cases were decided.

"Discretion must be governed by rule, not by humor; it must not be arbitrary, vague or fanciful, but legal and regular."

Lord Mansfield in *Rex.* v. *Wilkes*, 4 Burr, 2539.
Tripp v. *Cook*, 26 Wend., 152.

In the case at bar there was an absolute abuse of discretion; the appellants were held without bail from June 2, on void complaints, over objection. The commissioner's docket shows (Rec., 25-31) that certain complaints having served their purpose were dismissed. The appellants did not ask that the case on June 14th be continued eleven days; they only asked for time to examine the last complaint and to defend against it. An hour or so would have been sufficient time. They asked to see the depositions of the Canadian Government, then in open court, and their request was denied. (Rec., 31.) After all the evidence was in on June 28, and two of the defendants absolutely refused to put in any evidence the commissioner took the case under advisement to July 6th, and again to July 10th.

The case at bar is essentially different in many respects from any case yet decided. No case is found that holds that a magistrate can take a case under advisement after the evidence is all in. The authorities are against it.

In re Calder, 2 Edm. Select Cases, 380.

The appointment of Mark A. Foote to act in extradition matters by the district judge (Rec., 44) did not make

him a District Court or confer upon him powers of a district judge or powers to proceed as a district judge might have proceeded or continue a cause for more than ten days as a district judge might have done.

Todd v. *U. S.*, 158 U. S., 278.

Under the proviso in Art. 10 of the treaty of 1842, that delivery "shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found will justify his apprehension and detention for trial. It is held that the extradition commissioner should proceed *according to the laws of the states.*

In re Farez, 7 Blatch. 360.
In re Kelly, 25 Fed., 268.
In re Ezeta et al, 62 Fed. Rep., 972;

Where it was held the law of the states must furnish the rule of procedure.

Benson v. *McMahon*, 127 U. S., 463.

If neither congress nor the treaty has provided for the procedure as to continuances by extradition commissioners, the Laws of Illinois which are not in conflict with the treaty or acts of Congress, but auxiliary thereto, and which provide a mode of procedure as to continuances must govern the extradition commissioner, and such laws are constitutional.

Ex P. Rosenblat, 51 Cal., 287.
Ex P. Cubreth, 49 Cal., 436.
Kurtz v. *State*, 22 Fla., 36.
Com. v. *Tracy*, 5 Met. (Mass.), 536.
Ex P. Romanes, 1 Utah, 23.
Hurd on Habeas Corpus, p. 636.
Moore v. *Illinois*, 14 How, 1314.

Mark A. Foote did not proceed in accordance with the laws of Illinois or any other law. His orders entered after June 14, 1900, were void under the decisions of this and other states as heretofore cited, and it does not matter which side asked for the continuance.

U. S. v. *Horton*, 2 Dill, 94.
State v. *Swope*, 72 Mo., 399.

It will be noticed:

> "The 6th section of the treaty of 1889, providing that extradition should be carried out in the U. S. and her Majesty's dominions respectively, in conformity with the laws regulating extradition proceedings for the time being in the surrendering state"

contains the word *laws* in the plural. If this section does not mean anything, why was it incorporated into the treaty? It is fair to presume that the parties who drafted the treaty were familiar with the auxiliary legislation enacted by nearly all, if not all, of the states of the Union providing for modes of procedure not covered by the acts of Congress, and that the signers of the treaty wanted the proceedings to be carried out in accordance with not only the laws regarding the sufficiency of the evidence, but laws regulating continuances and all laws of the surrendering state not inconsistent with the other provisions of the treaty or Art. 10 of 1842.

Counsel for appellee refers to *U. S.* v. *Rauscher*, 119 U. S., 412, and says the state cannot surrender fugitives to a foreign power. I agree with him and say the state of Illinois is not a party to this proceeding and is neither trying to surrender nor prevent the surrender of appellants, and further say that no extradition commissioner

can surrender any one except according to law. Nothing in the Illinois law regulating continuances is in conflict with the treaty or acts of congress.

The cases of *In re Henrich*, 5 Blatch., 414, and *In re* Farez, 7 Blatch., 35, do not sustain the position of appellee. It does not appear that the extradition commissioner in these cases continued the hearings in violation of the U. S. Rev. Statutes or the state statutes, and no objections were made on the hearings or later that the continuances in those cases were not according to law, and the questions of discretion in regard to the continuances were not discussed, and further, section 6 of the treaty of 1889 was not in force at the time those cases were decided.

IV.

The complaints, the commissioner's warrants and mittimuses contain various recitals that Mark A. Foote was specially appointed for the purpose of Title, 66 R. S. U. S., and I do not think he was entitled to act because of his special appointment for the reason that Section 5270 of Title 66 of the U. S. Statutes is in that respect unconstitutional, for the reasons set out in the assignment of errors on that point (Rec. 17). The tenth article of the treaty of 1842 provided for the issuance of warrants by judges or other *magistrates*.

The word "magistrates," used in connection with the words "warrants by judges" does not refer to magistrates in the broad sense of a civil officer, but in the sense of an inferior judicial officer, whose powers are created and regulated by law. In the absence of Sec. 5270 would any one say that under the Ashburton treaty Mark A.

Foote, as a private citizen, who held these appellants, was a magistrate empowered to issue warrants within the terms of that treaty?

Congress can establish an inferior tribunal, but it does not invest such inferior tribunal with judicial power.

Robertson v. *Baldwin,* 165 U. S., 275.

Congress did not say U. S. Commissioners authorized to issue warrants by law. If so, the act might be good.

Robertson v. *Baldwin,* supra.

But Sec. 5270 is "Commissioners *so authorized* to do by the courts." Commissioners cannot be authorized to issue warrants by the courts. Commissioners are appointed to office by the courts, but they derive their authority to issue warrants from the law, not from the courts. Sec. 5270 is unconstitutional in thus attempting to invest a person with powers to hear and determine the rights of the parties under the treaty and pass upon the sufficiency of the evidence and construe treaties and laws.

Am. & Enc., Vol. 6, foot pages 1048, 1053, 1054 and 1055.

People v. *Chase,* 165 Ill., 527.

U. S. v. *Rider,* 50 Fed. Rep., 406.

Campbell v. *State Union Bank,* 6 How. (Miss.), 659.

Election Supervisors Cases, 114, Mass., 247.

If Mark A. Foote, as U. S. Commissioner, was a magistrate without such special appointment, then he should have continued the case according to the state statutes on continuances.

Judge Nelson *In re* Kane 14, How. 103, said:

> "This would be so even without the treaty as the only mode of procedure in summary criminal proceedings is according to the practice before the state magistrates."

Counsel for appellee lays much stress upon the decision of *In re* Kane, 14 How., 103, as sustaining the special appointment. The Kane case was not decided by a majority of this court. The bench then consisted of eight members, and this court was then equally divided on the main questions then decided, and stood four to four.

The court there did not decide that a special appointment under Sec. 5270 was good. In that case it did not appear that the U. S. commissioner was specially appointed. The chief question in that case was whether the commissioners could act without being first authorized to do so by the president.

V.

No rule of law, or rule of this court has been cited by the appellee why this cause should be advanced on the docket. Sec. 3 of Rule 26 is that criminal cases may be advanced, but a habeas corpus proceeding is not a criminal case. If reasonable bail is now granted and appellants can give it, one of the reasons assigned by appellee, namely, that appellants may have to remain in jail a year or more, will no longer exist.

Respectfully submitted,

Attorney for Appellants.

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No. 420.
Brf. of Trude for Motion to Admit to Bail.
Filed Dec. 17, 1900.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 420.

FRED LEE RICE, FRANK RUTLEDGE AND THOMAS JONES

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

BRIEF OF APPELLANTS ON MOTION TO ADMIT TO BAIL.

S. H. TRUDE,
ATTORNEY FOR APPELLANTS.

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Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

Brief of Appellants on Motion to admit to bail.

MAY IT PLEASE THE COURT:

The motion of appellants praying that this Honorable court fix a reasonable amount of bail herein, and that they be admitted to bail pending the appeal in this case should be granted.

They demanded bail before the extradition commissioner, and he denied their motion. (Rec., 16.) They prayed in their petition for the writ of habeas corpus for bail. (Rec., 16.) After the appeal was prayed and allowed, a supersedeas granted, a citation issued and served, the appellants moved the District Court herein to be admitted to bail, which motion was also denied and ruling then and there excepted to. (Rec., 48.)

The second section of rule 34 of this court provides:

> "Upon the appeal from the final decision of any court or judge discharging the writ after it has been issued, the person shall be remanded to the custody from which he was taken by the writ, or shall for good cause shown be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided."

The words "hereinafter provided" refer to the surety, etc., third section, rule 34.

In the case of *Hudson* v. *Parker*, 156 U. S., 281, section 2 of rule 34 was discussed, and, among other things, this court said:

> "That under section 917 of the Revised Statutes of the United States this court has power to regulate the manner of proceeding or mode of process in taking bail; that the statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail not only after arrest and before trial, but after conviction pending a writ of error.
>
> That the statutes as to bail provide that bail may be admitted upon all arrests in capital cases, and shall be admitted upon all arrests in other criminal cases. (Revised Statutes, United States, 1,014–1,016."

Article 8 of the amendments to the federal constitution is "Excessive bail shall not be required."

The inference being that bail is proper in all cases.

Section 1,015, Rev. Statutes, U. S., provides:

> "Bail shall be admitted upon all arrests in criminal cases when the offense is not punishable by death."

Sect. 7 Article 2 of the constitution of the State of Illinois provides:

> "All persons shall be bailable by sufficient sureties except for capital offenses, where the proof is evident or the presumption great."

Paragraph 545 of the Criminal Code of the State of Illinois, Starr & Curtis' Revised Statutes, p. 1,379, provides:

> "If it appears that an offense has been committed, and that there is probable cause to believe the prisoner guilty, and if the offense is bailable by the judge or justice of the peace, and the prisoner offers sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail is offered, or the offense is not bailable by the jndge or justice, the prisoner shall be committed to jail for trial."

Section 4 of the Fugitives from Justice Act in force in Illinois at the time of appellant's arrest was as follows:

> "If, upon examination, it shall appear to said judge, justice or police magistrate that said person is guilty of the offense alleged against him, it shall be the duty of such judge, justice or police magistrate to commit him to the jail of the county, or if the offense is bailable according to the laws of this state to take bail for his appearance at the next Circuit Court to be holden in that county, except in the County of Cook the recognizance shall be for the appearance of the accused to the next term of the Criminal Court of Cook County."

Section six of the treaty between the United States and Great Britain proclaimed March 25, 1890, is:

> "The extradition of fugitives under the provisions of this and of the said tenth article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering state."

There is nothing in this record showing that the appellants would not be entitled to be admitted to bail were they now in Canada and under arrest for the alleged offences, and if there was, I claim it would not change the rights of the appellants under our laws and rule 34 of this court which makes no exceptions in habeas corpus cases.

The argument that the treaty does not expressly provide for bail, and to admit to bail would be fixing a price for allowing an escape never was sound and especially in this age of advancement.

1st. I claim that the treaty does not militate against the right of bail.

2d. We owe no greater duty to a foreign power to deliver fugitives from justice than we do to a sister state —and the state statutes auxiliary to the Acts of Congress allowing bail in such cases have always been upheld.

3d. Such argument might be competent to urge for a repeal of our constitutions and laws, but courts will construe the laws as they are now in force, allowing prisoners to be admitted to bail, and I believe this court has never passed on the question of bail in an international extradition case before.

4th. To admit to bail is not to fix the price of liberty at this late day and if so (Wharton's Crim. Pl. & Pr., 9 Ed., Sec. 74.), such argument applies to every case.

Wharton *supra*, after stating that bail was granted at common law, says bail in extradition cases should be granted: "For no longer exist those strong temptations to break bail and fly which existed when Blackstone wrote. A fugitive from justice is now pursued to his place of refuge not merely by government but by

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sureties and the probabilities of ultimate escape are much diminished," and the learned author cites the case of Jefferson Davis' being admitted to bail when under indictment for treason.

Sec. 76, *supra*.

The construction of treaties is for the courts.

U. S. v. *Rauscher*, 119 U. S., 419.

The appellants have the right to appeal to this court. I assume that this court will pass upon the merits of this case when regularly reached on the calendar in the usual way. Is it right and lawful then that the appellants should undergo further imprisonment pending the hearing, and be deprived of their liberty even before indictment when prisoners are allowed bail even after conviction?

Respectfully submitted.

S. H. Strude

Atty. for Appellants.

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No. 420.

Reply Brief of Trude for Appellants

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REPLY BRIEF OF APPELLANTS ON MOTION TO ADMIT TO BAIL.

S. H. TRUDE,
ATTORNEY FOR APPELLANTS.

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Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

Reply Brief of Appellants on Motion to Admit to Bail.

I.

MAY IT PLEASE THE COURT:

The appellants in the case at bar are citizens of the United States (Rec., 2), and their right to bail at the time of their arrest and now, is a constitutional right, under the federal and state constitutions, which cannot be legally denied them when the treaty is silent on the subject.

A. & E. Ency. of Law, 3 Vol. (Sec. Ed.), 665.
Com. v. *Lemley*, 2 Pitts. (Pa.), 362.
State v. *Crocker*, 40 Pac. Rep., 687.
Ex parte Bridewell, 57 Miss., 39.
In re Perry, 19 Wis., 676.

The case of Ex p. Erwin, 7 Tex. App., 288, one of the cases cited by appellee, is not in point and not an authority against the right of appellants to be admitted to bail. That case was an extradition matter between states in the Union, and not an international extradition case, such as the one at bar, and the court there refused bail because it was there held, that since the federal constitution contained a provision regarding interstate extradition to the effect that the prisoners "Shall * * * be delivered up," the state constitution of Texas allowing bail could not be invoked or applied. If the reasoning in the Erwin case was good, and if the opinion is good law on the proposition in issue in that case, it cannot be said that the case has any application whatever under the facts in the case at bar, for the reason that the federal constitution contains no such provision whatever regarding international extradition.

The other case cited by appellee, that of *In re* Carrier, 57 Fed. Rep., 578, was an opinion of a district judge, and I submit, that the reasonings in that case are not sound, and the conclusions there reached are bad, and that the rule there announced, ought not to be followed. The court there said: "It was not a question whether larceny was a crime bailable by the common law or by our law, or the law of Canada."

This was an erroneous assumption to begin with. The opinion then went on to say, that the granting of bail was a matter provided by statute, and unless the statute expressly provided for bail, no bail could be given; in this the court erred again.

In *Ex parte* Dyson, 25 Miss., 359, it was held, "The action of the court was not controlled by statute enacted on the subjects of bail.

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Citing:

2 Hale, P. C., 129.
4th Co. Inst., 71.
2 Comp. Dig., p. 6 (Tit. F., 3).
1 Bac. Ab., 483-493.
2 Hawk. P. C., 117.

In *People* v. *Perry*, 8th Abbot. pr., N. S. (N. Y. S. C.), 27, where Perry was charged with murder, it was there held: "The court has power in all cases to grant bail whether it be treason, murder or other offense."

Citing:

Ex parte Taylor, 5 Cow. (N. Y.), 39.
People v. *Goodwin*, 1st Wheeler' Cr. Cas., 434.

Judge Hallet erred again in the Carrier case, supra, by holding that the words in Section 6270, Title 66 U. S. R. S., to the effect that, "the commissioner shall issue his warrant for the commitment of the prisoner to the jail, there to remain until such surrender shall be made," prevented the giving of bail.

These words were inserted as a protection to the commissioner in committing the prisoner to jail, and to authorize the jailer to receive the prisoner. This was a *grant* of power, not a *limitation* of the commissioner's powers. The words, *"to remain until surrender shall be made,"* do not mean that the court, having power to commit or discharge, would not have the power to admit to bail, and the act of Congress in this respect must be construed to mean, "to await the due process of law."

People v. *Kennedy*, 2 Park Crim. Rep. (N. Y.), 316.

These words were not intended to prevent the giving of bail. If they were, then the section in this respect is *unconstitutional* for this reason, if not for the reasons already assigned, and Judge Hallet's construction of these words makes the act unconstitutional, because there is nothing in the federal constitution granting to Congress the right and power to deny a prisoner's right to bail under the constitution.

Congress is surrounded by limitations, and Article 8 of the federal constitution, which says excessive bail shall not be required, amounts to a limitation on the power of Congress to refuse bail.

The opinion in the Carrier case is contrary to the opinion in *Hudson* v. *Parker,* 156 U. S., 288, where it was held that the statutes of the United States have been framed upon the theory that a person accused of crime shall not until he has been finally adjudged guilty in the court of last resort, be compelled to undergo imprisonment, but may be admitted to bail.

The court of King's bench or any judge thereof in the plenitude of their power, may admit to bail in all cases whatsoever.

Rex v. *Rudd,* Cowper, 331.
Rex v. *March,* 3 East, 137.
Kendall's case, 5th Moody, 78.
Rex v. *Wyndham,* 1 Stra., 2.
Watson case, 1st Salk, 106.
Page v. *Price,* 3rd Salk, 57.
Rex v. *Kendal et al.,* 1 Raymond's Repts., 65.

The power to admit to bail was recognized in case of high treason. Combs' case, 10th Moody, 334.

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Those courts in the United States that exercise jurisdiction similar to that of the King's bench, have inherited the same power as regards bail.

A. & E. Ency. of Law, Vol. 3 (2nd Ed.), 656.

Citing cases in Georgia, Indiana, Louisiana, Minnesota, Mississippi, New Hampshire, New Jersey, New York, South Carolina and Vermont.

It is a general rule, that any court or magistrate that has jurisdiction to try a prisoner in any case, has jurisdiction to discharge him, and *a fortiori* to admit him to bail.

A. & E. Encyc. of Law, Vol. 3 (2nd Ed.), 654.

Citing:

People v. *Goodwin*, 1 Wheel. Cr. Cas., 434.
People v. *Van Horn*, 8 Barb. (N. Y.), 158.
People v. *Shattuck*, 6th Ab. (N. C.), 37.
State v. *Edna*, 4 D. E. V. & B. (N. Car.), 318.
Com. v. *Lemley*, 2 Pitts. (Pa), 362.
Thomas v. *State*, 12 Texas App., 416.
State Tr. v. *Ralfe*, 15 Vt., 9.
People v. *Kennedy*, 2 Park Cr. Rep. (N. Y.), 312.

The rule as to felony cases has been very much relaxed in modern times, both in England and in the United States, and bail is now grantable of course in all felonies not capital.

A. & E. Ency., 3 Vol. (2nd Ed.), p. 666.
3rd Hawk. P. C., 225; and New York cases above cited.

II.

Sec. 9 of British statutes, enacted in 1870, applying to international extradition and the treaty between the United States and the British possessions (33 and 34 Vict. C., 52), is:

> "The police magistrate shall hear the case in the same manner and have the same *jurisdiction and powers* as near as may be as if the prisoner were brought before him charged with an indictable offense committed in England."

This includes the power to bail.

On the question as to whether or not the tendency in these modern times in all extradition matters is to admit to bail, it is significant to notice that England in 1881 pasesd an act, the enacting clause of which is as follows:

> "An Act to amend the law with respect to amend the fugitive law in her Majesty's dominions, and for other purposes conencted with the trial of offenders." 44 and 45 Vict. Ch., 69.

It is provided in section 5 that

> "A fugitive when apprehended shall be brought before a magistrate, who shall hear the case in the same manner and have the same jurisdiction and powers as near as may be (including the power to remand and remit to bail) as if the fugitives were charged with an offense committed within his jurisdiction." * * *
>
> "A fugitive apprehended on a provisional warrant may be from time to time remanded for such reasonable time not exceeding seven days at any one time."

It is also significant to notice that the English people regulated the question of continuances in such cases by statute and limited the length of time of each continuance to seven days.

Judge Blatchford, *in re* Farez, 7 Blatch., 345, said that in United States cases the commissioner should follow the States statutes and adopt the mode of procedure provided for in the States statutes, and that a like rule should be observed in *international extradition cases.*

III.

The argument by appellee, that no ground has been shown by the appellants overcoming the finding of the commissioner or the judge of the District Court that bail was not allowed, ought not to have the slightest weight under the facts and circumstances in this case.

1st. Because the appellant's right to bail is a constitutional right.

The appellants prayed for bail at every stage of this proceeding, have exhausted every remedy and have preserved their rights by exception. What more could they do?

2nd. It is clear from the facts in the case at bar, that the commissioner and district judge, in the case at bar, denied the motion of the appellants for bail because they thought that no bail could be granted in such a case, and that they had no discretion in the matter.

IV.

The evidence was omitted in the record for the reason, that this court has repeatedly held that it will not pass on the sufficiency of the evidence introduced before the commissioner.

The court will not look at the evidence in any case

where the complaint is insufficient to confer jurisdiction, or to determine the jurisdiction of the commissioner where such jurisdiction does not depend on the evidence.

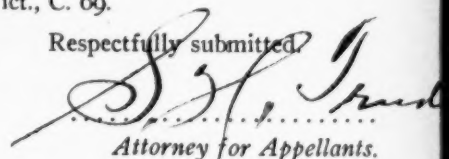
The amount of bail can be determined by the nature of the accusations made in the complaint, in accordance to the practice before examining magistrates or on indictments, without hearing any evidence in the first instance.

V.

I believe the reason why the Carrier case is the only case where a federal court has passed on the question of bail is because bail has in all other cases of extradition been allowed. Bail is allowed by statute in England.

33 and 34 Vict., C. 52.
44 and 45 Vict., C. 69.

Respectfully submitted,



Attorney for Appellants.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 420.

FRED LEE RICE ET AL.

vs.

JOHN C. AMES, MARSHAL OF . . NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

APPEAL FROM THE DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS, NORTHERN DIVISION THEREOF.

Reply Brief on Motion to Admit to Bail.

May it please the court:

In the argument in support of the motion to admit appellants to bail, section 6 of the treaty between the United States and Great Britain is cited (p. 3), and that section is fatal to this motion. In this case the "surrendering State" is the United States, and its laws "regulating extradition" furnish no authority for bail, as is admitted

in said argument (p. 4). It would therefore not be "in conformity with the laws regulating extradition for the time being in force in the surrendering State," to allow bail to be given herein, and if the prisoners escaped it would amount to a nullification of such laws and of the rights guaranteed by treaty. This proposition is supported by the opinion in *Ex parte* Erwin, 7 Tex. App., 288, which was a case of rendition, and the effect of a provision of the constitution of Texas providing for bail was considered and held not controlling.

The implication of the argument that the constitution or laws of the State of Illinois providing for bail control this case is disposed of by U. S. *vs.* Rauscher, 119 U. S., 407, holding that the Federal authority is exclusive in international extradition, and that States have no power over the same.

The fact that (with one exception) none of the causes reported in this court or in the district or circuit courts touching the extradition act shows any attempt to get bail on the part of the parties arrested is itself significant, as more than a century has elapsed since the first extradition treaty. The exception is *In re* Carrier, 57 Fed. Rept., 578, a case where the facts bear a remarkable similarity to those herein. The opinion of Judge Hallett in that case practically covers all the grounds urged on behalf of this motion, and, being the only adjudication by a Federal court, I ask your attention to its reasoning.

II.

The controlling legal principle, I urge, is that the laws enacted by Congress have no extra-territorial effect, and do not provide for the punishment of crimes and misdemeanors committed in foreign countries having settled governments, nor for bail in such cases. Therefore, wherever bail is referred to in the rules of this court or in Federal or State laws, it of course means bail in a case to be *tried* under

such rule or law, or of which the Federal or State laws have jurisdiction.

If this proposition is sound (and it seems it would be an impertinence to cite authorities upon a rule so elemental), then the acts and decisions cited in support of the motion are not applicable.

III.

Since neither the treaty between the United States and Great Britain nor the acts of Congress provide for bail in extradition cases, there can be no authority, unless it be the common law recognized by both of said countries; but by the common law bail was not allowed in criminal cases since I Edw. IV, c. 2. Bail was always refused in cases of felony (Rex *vs.* Wyer, 2 T. R., 77).

I therefore submit that bail is not allowable in this case, and the matter is entirely discretionary with the court (U. S. *vs.* Lawrence, 4 Cranch, 518), and no ground has been shown overcoming the finding of the commissioner or the judge of the district court below to warrant bail if it were allowable.

Respectfully submitted.

Lynden Evans

Attorney for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900

No. 420.

FRED LEE RICE ET AL.

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

APPEAL FROM THE DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS, NORTHERN DIVISION THEREOF.

Reply Brief on Motion to Dismiss or Affirm or Advance the Cause.

May it please the court:

The authorities cited by appellants against the motion to dismiss all apply to statutes other than sections 763 and 764 of Revised Statutes, except *In re* Lennon, 150 U. S., 393, in which it is said *arguendo* that said sections were not necessarily repealed by the circuit court of appeals act; but it further ap-

pears from that opinion that the question of jurisdiction, upon which the appeal in that case depended, was not, in a proper sense of that word, involved, and accordingly that appeal was dismissed. Furthermore, it does not appear that Bucklin *vs.* United States, 159 U. S., 680, was cited to the court, neither was the court's attention called to the construction placed by the court in McLish *vs.* Roff, 141 U. S., 661, and Lau Ow Bew *vs.* United States, 144 U. S., 47, upon the circuit court of appeals act as dividing the *entire appellate jurisdiction* between the Supreme Court and the circuit court of appeals. It is apparent that if appeals may still be taken under section 763 of the Revised Statutes, the circuit court of appeals act of 1891 did not divide the entire appellate jurisdiction, but only part of it.

Furthermore, this appeal *can only* come here under said act of 1891, and therefore it must come here altogether under said act, and, as under the Bucklin case, *supra*, the proper method was to sue out a writ of error to the judgment below dismissing the writ of *habeas corpus*, an appeal cannot take the place of a writ of error, and the appeal should be dismissed.

II.

It is apparent from appellants' argument under point II that his grounds are those which might be available upon writ of error to the finding of the United States commissioner, but they are not available in an appeal from a judgment dismissing a writ of *habeas corpus*.

The evidence, not being brought to this court, it will be presumed, supported all the averments of the complaint, and appellants should not be heard in their argument to assert what was done at the trial in regard to the proof of the facts averred. The long list of cases, most of them upon what is necessary in indictments, cited to show that the complaint was not sufficient require no other answer than the reading of the complaint itself, taken in connection with the requirements of

such complaint as are set forth in the act of Congress upon extradition, and it is urged that if the complaint complies with that act it is sufficient, regardless of decisions of State or other courts upon questions arising under other laws.

The complaint (Rec., 32) is not upon information and belief as to all the crimes, as asserted by appellants (Brief, p. 19). The stealing of the stallion, road-cart, and harness and the breaking into the counting-house at Aurora, Canada, and stealing of money therefrom are positively averred. The kind of money stolen, some American, some Canadian, appears in the complaint (Rec., 33), although appellants' brief (p. 15) would leave you to infer the opposite.

The crimes respectively are distinctly averred (Rec., 32 and 33) with great particularity, and the complaint is not subject to the criticism made.

As to "shopbreaking" being an offense, the record (p. 43) shows that parts of the Canadian statutes were introduced in evidence, and as appellants have not brought up the evidence, it will be presumed that the evidence sustained the averments.

Again, "felony" need not be averred, as claimed, as it is sufficient to follow the act of Congress on the subject.

The adjournment for eleven days (p. 21) was made at appellants' request (Rec., 42), June 14, 1900.

Some of the points made against the complaint are made here for the first time, but a longer discussion would probably be profitless, as the so-called errors assigned are not assignable in an appeal in a *habeas corpus* case, the court having admittedly jurisdiction of the subject-matter and the parties, and to discuss the constitutionality of the act on extradition and of the Webster-Ashburnham treaty of 1842 is, I respectfully urge, frivolous.

Respectfully submitted.

Lynden Evans

Attorney for Appellee.

No. 420.

Brf. of Evans for

Filed Dec. 17, 1900.

Office Supreme Court U.S.
FILED
DEC 17 1900
JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 420.

FRED LEE RICE ET AL.

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

BRIEF ON MOTION TO DISMISS OR AFFIRM, OR ADVANCE THE CAUSE.

LYNDEN EVANS,
ATTORNEY FOR APPELLEE.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 420.

FRED LEE RICE ET AL.

vs.

JOHN C. AMES, MARSHAL OF THE NORTHERN DISTRICT OF THE STATE OF ILLINOIS.

Appeal from the District Court in and for the Northern District of the State of Illinois, Northern Division thereof.

To the Honorable, the Judges of the Supreme Court of the United States:

Now comes John C. Ames, United States Marshal for the Northern District of the State of Illinois, named as appellee herein, by Lynden Evans, his attorney, and moves the court to dismiss the appeal herein, or to affirm the judgment below pursuant to rule 6 of this court, and in case neither of said motions are granted, then to advance the cause, the grounds for such motions being shown in the brief following. And said defendant further shows to the court that the controlling facts are as follows, as appear from the printed portions of the record submitted herewith. On June 14, 1900, a complaint under the Extradition Act was filed with and sworn to before Mark A. Foote, a United States Commissioner, duly authorized to act as such by order of the said District Court, as provided by section 5270, Revised Statutes, an officer of the government of Canada signing and verify-

ing the application, and a writ was duly issued by said commissioner, under which appellants were arrested. Hearings were had before said commissioner, and upon July 10, 1900, the commissioner decided that the prisoners should be held, and sent a copy of the proceedings to the Secretary of State pursuant to the statute, and the sixty days provided in which the President's warrant must issue has expired. On July 11, 1900, a petition for habeas corpus was filed in the District Court for the Northern District of Illinois praying that the prisoners be released because (1) the affidavit to the application was upon information and belief; (2) because a continuance was had before the commissioner for more than ten days; (3) the authentication by William L. Sewell, United States consul, of the depositons, was wholly defective and insufficient, and that all the depositions were insufficiently authenticated; (4) that there was not sufficient legal evidence introduced to prove a probable case of guilt, and further, that Section 5270, Title 66 of the Revised Statutes of the United States is unconstitutional, and is in contravention of Section 1, Article 3 of the Constitution of the United States, and that there was no constitutional power in the District Court to appoint commissioners in extradition; that there is no constitutional power for Congress to delegate to a District Court the power to establish such a tribunal, and that the prisoners had been refused bail,—the substance of which petition is contained in the assignments of error printed in the printed portions of the record submitted herewith. The writ issued, the prisoners were produced in court by said Marshal, issue was joined, a hearing was had and the writ was discharged, whereupon an appeal was prayed and allowed to this court.

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BRIEF.

I.

That there is no provision in the law in force when this appeal was prayed and allowed for an appeal in this class of cases.

Since March 3, 1803, (2 Stat. C. 40) no appeals have been entertained in this court, in cases at law, appeals being allowable only in chancery and admiralty. These remedies can never in the Federal Court be used interchangeably.

The San Pedro, 2 Wheat., 132.
Brooks v. *Norris*, 11 How., 204.
Sarchet v. *U. S.*, 12 Pet., 143.
Ballance v. *Forsyth*, 21 How., 389.
Walker v. *Dreville*, 12 Wall., 440.
Bondvrant v. *Watson*, 103 U. S., 278.
Ex parte Ralston, 119 U. S., 613; 7 Sup. Ct., 317.

But it may be urged that in sections 763 and 764 of the Revised Statutes of the United States an appeal was allowed in habeas corpus proceedings, and that cases are to be found in the reports of this court where appeals in such cases have been retained, but it is a sufficient reply to say that the said sections referred to appeals from any inferior court to a Circuit Court, and for an appeal from the decisions of the Circuit Court to the Supreme Court, but the said sections 763 and 764 together with the amendment thereto, of March 3, 1885, which was a substitute for section 764 of the original act, have been re-

pealed by the act of March 3, 1891, establishing Circuit Courts of Appeals, inasmuch as the entire appellate jurisdiction is by that act divided between this Court and the Circuit Courts of Appeal.

McLish v. *Roff*, 141 U. S., 661; 12 Sup. Ct., 118.

Lau Ow Bew v. *U. S.*, 144 U. S., 47; 12 Sup. Ct., 517.

It is apparent that the Circuit Court of Appeals Act is the only act under which a review of a judgment of any district court could be had in this court. Before that act no case could come here directly from a district court.

Bank v. *Peters*, 144 U. S., 570; 12 Sup. Ct., 767.

Little Rock & M. R. Co. v. *East Tennessee & G. R. Co.*, 159 U. S., 698; 16 Sup. Ct., 189.

Webster v. *Daily*, 163 U. S., 155; 16 Sup. Ct., 961.

Prior to the last mentioned act appeals from the District Court went to the Circuit Court. This case now pending in this court therefore depends entirely upon the Circuit Court of Appeals Act of March 3, 1891.

That act must, therefore, it is urged, be considered as a repeal of sections 763 and 764 and the amendment of March 3, 1885, to said section 764 of the Revised Statutes.

If the language of the act of March 3, 1891, were to be construed literally, without any reference to previous construction of like words or sentences used therein, then either an appeal or writ of error might be resorted to in any case, either in law or equity. But the provision should be construed with reference to the hitherto existing law and practice in cases of review where like words have

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been used. This has been decided by this court in *Bucklin* v. *United States,* 159 U. S., 680; 16 Sup. Ct. Rep., 182. That case construed the act of March 3, 1891, creating Circuit Courts of Appeals, and held that: "There was no purpose by that act to abolish the general distinction at common law between an appeal and a writ of error. The final judgment of a court of the United States in a case of the conviction of a capital or otherwise infamous crime is not reviewable here, except upon writ of error."

The Bucklin case arose under the *third* provision of section 5 of the act of March 3, 1891, relating to a review of a conviction for a capital crime, etc., and the present case must be considered to have been brought under the *fifth* provision of said section 5 of the act of March 3, 1891, relating to a review of judgments involving the constitutionality of any law of the United States or construction of any treaty, etc. The decision above quoted in the Bucklin case will therefore exactly apply, *mutatis mutandis.*

It may be admitted that there may be cases where the distinction between appeals and writs of error has not been preserved, but those were cases in which the question was not raised; and, as was said in *Cross* v. *Burke,* 146 U. S., 82; 13 Sup. Ct. Rep., 22, referring to the decision in *Wales* v. *Whitney,* 114 U. S., 564, in a case in which the question of jurisdiction was not raised, "the Court does not consider itself bound by the view expressed." Here upon this motion the right to an appeal under the act of March 3, 1891, under which only this case can come here, is directly raised by this motion, and the only direct adjudication I find upon it is the Bucklin case, *supra.* I therefore submit that the appeal should be dismissed.

II.

The only errors that can be assigned herein, in this court must question the constitutionality of the act of Congress on Extradition (Rev. Stat. Title LXVI, Secs. 5270-5280) or the treaty between the United States and the United Kingdom, of 1842 and that of 1889, determining what crimes are extraditable; but this act of Congress and said treaties have been acted upon so long and have been so often construed in this Court that it is frivolous or merely a means of delay at this day to argue that they are not constitutional.

If your Honors retain this appeal, I then urge that the judgment should be affirmed, because on the face of the record it appears that the appeal is frivolous and taken for delay. This will be manifest from a very brief inspection of the errors assigned.

The first error assigned is that the United States Commissioner who heard the case below, pursuant to the statute on extradition, had no jurisdiction, because the application was made on information and belief. This is a habeas corpus matter and not a writ of error, and errors in pleading and practice are not therefore assignable here. The purpose of a writ of habeas corpus is not to correct mere errors or technicalities.

Benson v. *McMahon*, 127 U. S., 457; 8 Sup. Ct., 1240.

Furthermore an application on information and belief is proper.

Ex parte Lane, 6 Fed. Rep., 34.
Moore on Extradition, Sec. 285.

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The next error assigned is that the Commisioner continued the case for more than ten days, which is not in conformity with any law and in violation of section 6 of the treaty of 1889, the laws of the United States and the State of Illinois. Neither said treaty nor the laws of the United States regulates or even refers to the discretion of courts in granting continuances, and the laws of Illinois can have no application to a proceeding under a federal and not a state power. Furthermore, what laws are referred to are not pointed out.

The rule seems to be settled that the length of adjournment is within the discretion of the magistrate.

In re Henrich, 5 Blatchf., 414, an adjournment was had for thirty days. *In re* Farez, 7 Blatchf., 35, a number of adjournments were had, amounting in all to twenty-six days, and the only question that can be raised upon review is abuse of discretion, which is not a constitutional question. The supposed error is not assignable here for the same reason as the first error, *i. e.*, this is not a writ of error to the original proceeding.

The next assignment of error is put in argumentive form; it is that the commissioner had no jurisdiction, because section 5270, title 66 of the Revised Statutes is unconstitutional, (1) because it does not provide for any mode of procedure relating to continuances, changes of venue, bail, etc., before the commissioner appointed in extradition matters by the District Court of the United States. (2) Said section 5270, title 66 is unconstitutional, because Congress had no power to confer upon a District Judge of the United States power to create such inferior courts. (3) Because said magistrate is exercising judicial power in the premises and Congress

has not created such a court and established its jurisdiction, powers, etc.

It seems apparent that this first section of this assignment is frivolous, for the idea that an act is unconstitutional because it does not provide for rules of practice in cases arising under it, has been, up to the date of the assignment of errors herein, unheard of, and is not serious on its face.

Number 2 is frivolous because in the act in question Congress does not attempt to confer upon a District Judge any power to create "inferior courts." The words of the statute are a sufficient answer to this part of the assignment.

An examining magistrate, such as a commissioner, is not a court in the real sense of that word. The commissioner who hears applications for extradition is in no sense trying the prisoners.

Benson v. *McMahon*, 127 U. S., 457.

Number 3 of said assignment is a contradiction, because the statute expressly names commissioners as having authority to hear applications for extradition, but here again the word "court" is not used in this assignment of error in the correct sense.

The point is, I suppose, that all commissioners have not this power, but any commissioner may make application to a District or Circuit Court and act under the order of such court. This is not the creation of a court by another court, but a means of keeping record of all commissioners who are authorized to act.

Numbers 2 and 3, however, grow out of a misuse of the word *court*. The reasoning in *United States* v. *Fer-*

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reira, 13 How., 40, settles that question, and to again raise it is only dilatory.

In re Kane, 14 How., 103, the power of such commissioners was considered. In that case the commissioner acted under the same statute now called in question, and his action was sustained by the majority of the court, and the question of the power of the commissioner to act was upheld by the dissenting members of the court, but they held that the foreign minister must first make a demand for a warrant.

The confusion existing in this assignment grows out of the fact that it is forgotten that section 5270 of the revised statutes was enacted to enforce, among other treaties, the treaty with Great Britain now in question, which treaty provided that "the respective judges and other magistrates of the two governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of fugitives.

I, therefore, submit that the question on the second and third sections under the last mentioned assignment of error are utterly untenable because confusing a court with its power to sentence prisoners, with what amounts to a mere examining magistrate who has no power but to hold prisoners to a court for trial, or in this case to recommend that the president so hold.

If, however, you disregard the three reasons given for this assignment of error, and consider it by itself, then it is equally untenable.

The power to pass this act grows out of and exists under the treaty clause of the constitution, and was discussed and settled in 1840 in *Holmes* v. *Jennison,* 14 Pet., 540. There the question was as to the power of the Gov-

ernor of Vermont to surrender a criminal to Canadian authorities, and the court was equally divided, but all five opinions uphold such power in the federal government under the constitution. The very sections of the statute in question were acted upon in a learned and exhaustive opinion by the late Justice Miller in *United States* v. *Rauscher,* 119 U. S., 412, and the treaty in question, herein called unconstitutional in the errors assigned, was therein held to be part of the supreme law of the land.

The power to deliver fugitive criminals to other nations has always been recognized in this country. There was a provision for the mutual delivery of murderers and forgers between the United States and Great Britain in the treaty negotiated by Mr. Jay in Washington's administration. Thomas Jefferson considers this power undisputed. Letter to Mr. Genet, September 12, 1793. 1 Am. St. Pap., 175.

Mr. Justice Blatchford, *In re* Angelo De Giacomo, 12 Blatch., 391, says "It is not to be questioned that a treaty stipulation on the part of the government of the United States, to surrender fugitives from justice, is a lawful stipulation and within the authority of the treaty making power."

The next assignment of error, namely, that the petitioners were denied bail is frivolous, because it is not a constitutional question and cannot be assigned in this court. And this question was settled, in principle, in the Jonathan Robbins case, Wharton's State Trials, p. 403, where it is pointed out the provision for jury trials in the constitution applies only to crimes committed within the United States, and therefore cases in extradition for crimes committed out of the United States are not governed thereby.

The next assignment of error is a mere statement that the court below erred, and does not point out any error.

The additional assignment of error refers only to continuances, and only shows that the examining magistrate took sufficient time to read the large amount of testimony offered.

Thus it manifestly appears that this case is brought here upon no really controverted question, that the errors assigned are either frivolous or refer to questions so long and so often settled, that the judgment of the court below ought to be affirmed.

III.

The importance of the demanding government, the United Kingdom; the fact that the appellants have already been in custody for over six months, and may remain so for a year more, it is submitted, is ground to advance the cause, if neither of the above motions prevail.

If your Honors are of the opinion that the case should be retained and heard on the merits, then I beg to suggest as grounds to advance the hearing the importance of the demanding government, the United Kingdom, and the fact that the rights given by a solemn treaty of the United States with the United Kingdom are involved and the fact that, in the ordinary course of your Honors congested docket, it would be necessary for the three appellants to remain in jail for a year or more, in all probability, and that the President's warrant, which the statute says must be issued within sixty days must be legally presumed to have issued, as it has, for if it had not, appellants would have been released long ago, and this cause would not be here. Furthermore, the delay common to

our more deliberate juridical procedure in this country, is not understood beyond our own land, and as a consequence the force and dignity of our administration of law suffers in the estimation of foreigners, with whom our national relations are yearly growing more and more intimate.

This question then involves our action under one of our treaties with foreign nations and on this ground, and the others above set forth, I ask that the cause be advanced for hearing to as early a day as may be convenient to your Honors, if not dismissed or affirmed, as above prayed.

Respectfully submitted,

Lynden Evans

Attorney for Appellee

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Supreme Court of the United States.

No. 420.—October Term, 1900.

Fred Lee Rice et al., Appellants, vs. John C. Ames. } Appeal from the District Court of the United States for the Northern District of Illinois.

[February 25, 1901.]

This was an appeal by Fred Lee Rice, Frank Rutledge and Thomas Jones from an order of the District Court for the Northern District of Illinois, denying their application for a discharge upon a writ of *habeas corpus*, the object of which writ was to test the validity of certain proceedings against the appellants, taken before a commissioner for that district, specially authorized to take jurisdiction of proceedings for the extradition of persons charged with crimes, under treaties with foreign governments.

The proceedings before the commissioner are set forth in a bill of exceptions, signed by the district judge.

The first warrant for the arrest of the appellants was issued June 2, 1900, upon complaint made upon information and belief, by "a police officer of the city of Chicago," and an affidavit of a police detective of the city of Toronto, Canada, also upon information and belief, charging defendants with sundry crimes committed both at Aurora and at Toronto, in the Province of Ontario. Pursuant to this warrant appellants were taken by the respondent, Ames, as United States marshal, out of the custody of the city police, by whom they had been arrested the day before, and brought before the commissioner. Proceedings were adjourned until June 4, when the case was dismissed, and a new warrant issued upon the complaint of Albert Cuddy, police detective of the city of Toronto, also upon information and belief. Defendants moved to quash this complaint and warrant by reason of the fact that the complaint was made upon information and belief, which was denied, and the proceedings adjourned until June 14. Defendants were committed for further hearing. Upon that day, it appearing that the proceedings had been taken only for the purpose of provisional apprehension and detention, the case was dismissed, and a new and final complaint made by William Greer, a government detective for the Province of Ontario, duly authorized by the Attorney General of the province to act as the agent of the government in the prosecution of extradition proceedings.

This complaint contained four counts, the first of which charged the defendants, upon information and belief, with stealing from the post office

building, in the town of Aurora, a quantity of Canadian postage stamps, $55 in money and certain certificates in mining stock. The other three counts, in which the charge was made absolutely and not upon information and belief, charged the defendants first, with stealing a horse, cart and harness; second, with breaking and entering a private bank in the town of Aurora with intent to steal, and also with the larceny of certain money in the bank; and third, with breaking into a shop on Queen street in the city of Toronto. A new warrant was issued upon this complaint, and the examination adjourned until June 25, at which time defendants were brought before the commissioner and motion made for their discharge for want of jurisdiction, and for insufficiency of the complaint. This motion being denied, the case went to a hearing upon certain documents certified by the American consul, and a large number of depositions of witnesses which were not sent up with the record. The examination was continued for several days, and finally upon July 10 the commissioner found there was probable cause to believe the defendants guilty, and ordered them to stand committed to await the action of the proper authorities.

Whereupon, and upon the same day, petitioners sued out this writ of *habeas corpus* from the District Court, and from the order of that court, denying their discharge, they took an appeal directly to this court.

Mr. Justice BROWN delivered the opinion of the Court.

1. Motion is made to dismiss the appeal upon the ground that there is no provision of law allowing an appeal in this class of cases. Prior to the Court of Appeals act of 1891, provision was made for an appeal to the Circuit Court in *habeas corpus* cases "from the final decision of any court, justice or judge inferior to the Circuit Court," (R. S. sec. 763;) and from the final decision of such Circuit Court an appeal might be taken to this court. (R. S. sec. 764, as amended March 3, 1885; 23 Stat 437.)

The law remained in this condition until the Court of Appeals act of March, 1891, was passed, the fifth section of which permits an appeal directly from the District Court to this court "in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question." In this connection the appellee insists that an appeal will not lie, but that a writ of error is the proper remedy. In support of this we are cited to the case of *Bucklin* v. *United States*, (159 U. S. 680,) in which the appellant was convicted of the crime of perjury, and sought a review of the judgment against him by an appeal, which we held must be dismissed, upon the ground that criminal cases were reviewable here only by writ of error. Obviously that case has no application to this, since under the prior sections of the Revised Statutes, above cited, which are taken from the act of 1842, an *appeal* was allowed in *habeas corpus* cases. The

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observation made in the Bucklin case that "there was no purpose by that act to abolish the general distinction, at common law, between an appeal and a writ of error," may be supplemented by saying that it was no purpose of the act of 1891 to change the forms of remedies theretofore pursued. (*In re Lennon*, 150 U. S. 393; *Ekiu* v. *United States*, 142 U. S. 651; *Gonzales* v. *Cunningham*, 164 U. S. 612.) As a construction of the extradition treaty with Great Britain is involved, the appeal was properly taken to this court.

2. The first assignment of error is to the effect that the commissioners issuing the warrant had no jurisdiction, because the complaint of Greer was upon information and belief, and not such as was required by the treaty, or by section 5270 of the Revised Statutes. The first two complaints, which were dismissed, as well as the first count of the complaint under which the proceedings were finally had, were obviously insufficient, since the charges were made solely upon information and belief, and no attempt was made even to set forth the sources of information or the grounds of affiant's belief. This is bad, even in extradition proceedings, which are entitled to as much liberality of construction in furtherance of the objects of the treaty as is possible in cases of a criminal nature. Nor is it saved by the fact that Greer described himself as government detective for the Province of Ontario, and duly authorized by the Attorney General to act as the agent of the government to prosecute extradition proceedings. (*Ex parte Smith*, 3 McLean, 121, 135; *In re Lane*, 6 Fed. Rep. 34; *In re Young Mfg. Co.*, (1900,) 2 Ch. 753.)

A citizen ought not to be deprived of his personal liberty upon an allegation which, upon being sifted, may amount to nothing more than a suspicion. While authorities upon this subject are singularly few, it is clear that a person ought not to be arrested upon a criminal charge upon less direct allegations than are necessary to authorize the arrest of a fraudulent or absconding debtor. (*Smith* v. *Luce*, 14 Wend. 237; *Matter of Bliss*, 7 Hill 187; *Proctor* v. *Prout*, 17 Mich. 473.) So, too, in applications for injunctions, the rule is that the material facts must be directly averred under oath by a person having knowledge of such facts. (*Waddell* v. *Bruen*, 4 Ed. Chan. 671; *Armstrong* v. *Sandford*, 4 Minn. 49.)

We do not wish, however, to be understood as holding that, in extradition proceedings, the complaint must be sworn to by persons having actual knowledge of the offense charged. This would defeat the whole object of the treaty, as we are bound to assume that no foreign government possesses greater power than our own to order its citizens to go to another country to institute legal proceedings. This is obviously impossible. The ordinary course is to send an officer or agent of the government for that purpose, and R. S. sec. 5271 makes special provision that "in every case of complaint and of a hearing upon the return of the warrant of

arrest, any depositions, warrants or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants or other papers shall, if authenticated according to the law of such foreign country, be in like manner received as evidence," of which authentication the certificate of the diplomatic or consular officer of the United States shall be sufficient. This obviates the necessity which might otherwise exist of confronting the accused with the witnesses against him. Now, it would obviously be inconsistent to hold that depositions, which are admissible upon the hearing, should not also be admitted for the purpose of vesting jurisdiction in the commissioner to issue the warrant. Indeed, the words of the statute, "in every case of *complaint*," seem to contemplate this very use of them. If the officer of the foreign government has no personal knowledge of the facts, he may with entire propriety make the complaint upon information and belief, stating the sources of his information and the grounds of his belief, and annexing to the complaint a properly certified copy of any indictment or equivalent proceeding, which may have been found in the foreign country, or a copy of the depositions of witnesses having actual knowledge of the facts, taken under the treaty and act of Congress. This will afford ample authority to the commissioner for issuing the warrant.

But while, as already observed, the first count is bad, by reason of its unsupported allegations upon information and belief, the second count contains a wholly different charge of larceny of a horse, cart and harness; the third, of breaking and entering a private bank in Aurora; and the fourth of breaking and entering a building in Toronto. Each of these counts charges a distinct offense, and each purports on its face to be made upon the personal knowledge of the complainant. While it is possible that he may have intended to make all these charges upon information and belief, the natural intendment of the last three counts is that the affiant swore to facts within his personal knowledge. If it be true, as stated by writers upon criminal procedure, (Bishop Crim. Proced. § 429,) that each count must be sufficient in itself, and averments in one cannot aid defects in another, it would seem to follow by parity of reasoning that defects in one ought not to impair the sufficiency of another. Upon the whole we think the complaint is sufficient.

3. By the second assignment, petitioners insist that the commissioner lost jurisdiction in the premises by continuing the proceedings from June 14 to June 25, a period of eleven days, in supposed violation of section 67, article 7, of chapter 79 of the Revised Statutes of Illinois, governing

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continuances by justices of the peace and examining magistrates, which enacts that "the justice before the commencement of the trial may continue the case *not exceeding ten days* at any one time on consent of the parties or on any good cause shown." It is insisted that this statute controls proceedings before commissioners of the United States in extradition cases, by virtue of the treaty and of the several acts of Congress prescribing the duties of commissioners. The treaty only provides in article 6, (26 Stat. 1508, 1510,) that "the extradition of fugitives under the provisions of this convention and of the said Tenth Article" (of the treaty of August 9, 1842) "shall be carried out in the United States and in Her Majesty's dominions respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering States." This evidently contemplates the laws of the United States regulating extradition, and has no reference whatever to the laws of the particular State within which the proceedings are taken.

Provision is made by R. S. sec. 627 for the appointment of commissioners of the Circuit Court, now called United States Commissioners, Act May 28, 1896, sec. 19, (29 Stat. 140,) who shall exercise such powers as may be conferred upon them. By R. S. sec. 727, they are vested with such authority "to hold to security of the peace and for good behavior in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States in cases cognizable before them." This evidently defines the extent of their powers and not the mode in which such powers are to be exercised. By section 1014, they are vested with the power to arrest, imprison or bail offenders "for any crime or offense against the United States" "agreeable to the usual mode of process against offenders in such States," that is, the State wherein the offender "may be found." That this has no application to continuances before commissioners in extradition proceedings is evident, first, by the fact that the section is confined to crimes or offenses against the United States, and, second, because it refers only to the usual mode of *process* against offenders in such State, and not to the incidents of the examination. To hold that the commissioner is confined in the matter of continuances to the methods prescribed for justices of the peace and other magistrates of the particular State would be utterly destructive of his power in cases arising beyond the seas, where weeks might be required to obtain the attendance of witnesses, or the procurement of properly authenticated depositions for use upon the examination. Clearly there is nothing either in the treaty or the statutes requiring commissioners to conform to the State practice in that regard. The only requirement seems to be that arising from the tenth section of the Ashburton Treaty, that the fugitive shall only be surrendered "upon such evidence of criminality as, according to the laws of the place where

the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."

4. The fifth assignment questions the constitutionality of R. S. sec. 5270, first, because it does not provide for any mode of procedure relating to continuances, change of venue, bail, &c., before commissioners appointed in extradition matters; second, because Congress had no power to confer upon a district judge of the United States authority to create such inferior courts; third, because Congress has not created such court and established its jurisdiction. We are unable to appreciate the force of this objection. Congress having provided for commissioners, who are not judges in the constitutional sense, had a perfect right under Art. 2, Sec. 2, ¶ 2 of the Constitution, to invest the District or Circuit Courts with the power of appointment. The only qualification required of a commissioner to act in extradition cases is that suggested by R. S. sec. 5270, that he shall be "authorized so to do by any of the courts of the United States." We know of no authority holding that Congress may not vest the courts with this power, and we are reluctant to create one.

The other assignments question the power of the commissioner to deny bail, which becomes immaterial here, as well as the finding of the district judge upon the facts, which is not examinable upon a writ of *habeas corpus.* There is nothing, too, in the additional assignment that the commissioner took the matter under advisement and abused his discretion in the matter of continuance, of which we see no evidence.

There are also noticed in appellant's brief certain objections to the complaint, which might have been successfully urged against a formal indictment for the same offense, but which do not constitute "a plain error not assigned or specified," of which, under rule 21 of this court, subdivision 4, we may take notice at our option in the absence of a special assignment. The technicalities of an indictment are not requisite in a complaint. (*State* v. *Holmes*, 28 Ct. 230; *Commonwealth* v. *Keenan*, 139 Mass. 193; *Rawson* v. *State*, 19 Ct. 292; *Keeler* v. *Milledge*, 24 N. J. Law, 142; *Williams* v. *State*, 88 Ala. 80; *State* v. *McLaughlin*, 35 Kan. 650.)

Petitioners have no just reason to complain of the action of the District Court in remanding them to the custody of the marshal, and its judgment is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.